

MT LEGISLATIVE HISTORY

Chapter 389 19 74

Bill H 595 S _____

Original bill & hist. no C

H. Committee on Public Health, Welfare & Safety

S. Committee on Executive Reorganization

Hearing Date(s) Mar 13, 1973 ✓ C

Hearing Date(s) Feb 13 ✓ C

Special Mar 15, 1973 ✓ C

Feb 18 ✓ C

Session _____ C

Feb 27 ✓ C

_____ C

Mar 01 ✓ C

Date Out Mar 15, 1973 ✓ C

_____ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

LEGISLATIVE SESSION

COMMITTEE ON EXECUTIVE REORGANIZATION

[illegible]

MINUTES OF THE MEETING
EXECUTIVE REORGANIZATION COMMITTEE
MONTANA STATE SENATE

February 13, 1974

The twelfth meeting of the Executive Reorganization Committee was called to order by Chairman Keenan on February 13, 1974 in Room 402 of the State Capitol Building at 12 Noon.

ROLL CALL: All members were present with the exception of Senator McOmber.

CONSIDERATION AND DISPOSITION OF SENATE BILL 461: Margaret Borg, staff attorney from the Legislative Council presented the proposed amendments to this bill. These amendments merely reinsert four sections which were to be deleted.

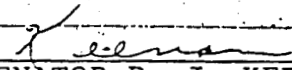
Senator Siderius moved to adopt the proposed amendments, seconded by Senator Goodheart. Carried. Senator Siderius moved that Senate Bill 461 DO PASS AS AMENDED, seconded by Senator Deschamps. Unanimous.

CONSIDERATION AND DISPOSITION OF HOUSE BILL 593: Miss Borg stated that these amendments reflect the 1973 update. Senator Deschamps moved that these amendments be adopted. Seconded by Senator Story. Carried. Senator Deschamps moved that House Bill 593 BE CONCURRED IN AS AMENDED. Seconded by Senator Goodheart. Unanimous.

CONSIDERATION OF HOUSE BILL 595: Margaret Borg had the proposed amendments to reflect the 1973 update. Senator Siderius moved that any action on House Bill 595 be deferred until the amendments can be studied. Seconded by Senator Rosell. Unanimous.

Friday, February 15, 1974 Senate Bill 87 and Senate Bill 625 will be heard with action taken.

Meeting adjourned.

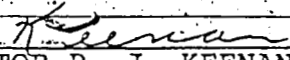

SENATOR P. J. KEENAN, Chairman

February 15, 1974

CONSIDERATION AND DISPOSITION OF SENATE BILL 625: Senator Story made a motion that Senate Bill 625 DO PASS, Seconded by Senator Deschamps. Motion failed. Voting no were Senators Goodheart, Shea, Siderius, and Keenan. Senator Boylan left an absentee written No vote for the record.

House Bill 595 will be heard on Monday.

There being no further business the meeting was adjourned.


SENATOR P. J. KEENAN, Chairman

MINUTES OF THE MEETING
EXECUTIVE REORGANIZATION COMMITTEE
MONTANA STATE SENATE

February 18, 1974

The meeting of the Executive Reorganization Committee was called to order by Chairman Keenan on February 18, 1974, in Room 402 of the State Capitol Building at 12 Noon.

ROLL CALL: All members were present with the exception of Senator McOmber and Carl.

CONSIDERATION OF HOUSE BILL 593: Chairman Keenan stated that this bill regarding the health department had been heard before and asked Mr. Melby to explain the amendments. Mr. Melby said that most of the amendments were for the purpose of updating except for six which are for clean-up purposes.

Senator Aber asked whether or not the Department of Health reconciled with all of these suggested amendments, to which Mr. Melby replied that it seemed that the Health Department would benefit from the amendments to the bill. He said that this bill is a year old and should have been examined prior to this late date.

Mr. MacDonald representing the Anaconda Company said that "no further variances would be granted the Anaconda Company". That the health department could "close us down".

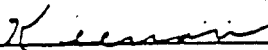
Much discussion was held as to what the law means and how it is to be interpreted and Senator Rosell said that she felt that a mistake had been made in the Reorganization Act. Senator Story said that when mention was made that monsters were created this would be a good one as a fine of \$10,000 would destroy a farmer or anyone else.

Senator Keenan said that we would like to take action and dispose of this bill as it has taken so much time.

Senator Aber moved that the committee recommend that the lawyers get together to come to a decision so that the committee would be advised as to what the outcome of HB 595 should be. Seconded by Senator Boylan. Senator Goodheart said that as a substitute motion he would suggest that the committee defer action until some of these things be researched. Seconded and carried. Senator Deschamps said that since it is water and air pollution that is being discussed Hoerner-Waldorf should be notified.

Chairman Keenan announced that on Wednesday, February 20, HB 600 will be heard. This deals with Natural Resources.

Meeting adjourned.


SENATOR P. J. KEENAN, CHAIRMAN

MINUTES OF THE MEETING
EXECUTIVE REORGANIZATION COMMITTEE
MONTANA STATE SENATE

February 27, 1974

The meeting of the Executive Reorganization Committee was called to order by Chairman Keenan on February 27, 1974, in Room 402 of the State Capitol Building at 12 Noon.

ROLL CALL: All members present with the exception of Senator Goodheart who was excused, and Senators Deschamps and McOmber who were absent.

CONSIDERATION OF HB 582: Senator Story had been assigned to this bill for further study and was asked by Chairman Keenan to give his report on this bill. Senator Story described those changes that he felt necessary. After a discussion by all of the members and clarification by Miss Borg and Mr. Melby, it was decided that those suggestions by Senator Story were in agreement by all.

It was moved by Senator Siderius and seconded by Senator Story that the following amendments be adopted: Amend the key line on page 1, line 24 following the word "through" by inserting the figures, punctuation and word "82-1911, 82-1913 through". To further amend on page 105, Section 90, lines 1 through 22 by striking the material therein in its entirety and by renumbering the following sections accordingly. Further amend page 106, Section 92, line 16 following the word "state" by inserting the words "of Montana, but not needed or used by any state institution or by any department of the state government". Motion carried. It was then moved by Senator Story and seconded by Senator Siderius that HB 582 AS SO AMENDED BE CONCURRED IN. Motion carried. Chairman Keenan commended Senator Story on a job well done.

Chairman Keenan asked Senator Carl to report on HB 590. Senator Carl commented on the changes and recommended that the amendments be adopted. It was moved by Senator Carl that the amendments be adopted and seconded by Senator Boylan. Carried. Senator Carl moved that HB 590 AS SO AMENDED BE CONCURRED IN. Seconded by Senator Boylan. Carried. Amendments as adopted by the committee are attached herewith.

Chairman Keenan announced that March 1 reports on House Bills 595 and 600 will be heard. Monday, March 4 HB 294 will be heard and Wednesday, March 6 Senator Shea will report on HB 649.

With no further business to come before the committee, the meeting adjourned at 12:45 p.m.

P. J. Keenan
SENATOR P. J. KEENAN, CHAIRMAN

MINUTES OF THE MEETING
EXECUTIVE REORGANIZATION COMMITTEE
MONTANA STATE SENATE

March 1, 1974

The meeting of the Executive Reorganization Committee was called to order by Senator P. J. Keenan, Chairman, on the above date in room 402 of the State Capitol Building at 12:00 noon.

ROLL CALL: All members were present except Senators Boylan and McOmber who were absent and Senator Carl who was excused.

CONSIDERATION OF HOUSE BILL NO. 595: Act for codification and general revision of laws relating to the Department of Health and Environmental Sciences.

Mr. Pat Melby, Government Operations Unit of the Governor's office, said that members of the Board had reservations on the bill. He talked to Mr. Eckel and Mr. Bartlett, and they were in favor of the bill. He added there was a meeting with people who were affected by actions of the Board and asked for their support or acquiescence of the bill.

Mr. Melby stated the updated amendments to the bill, which are shown on the Standing Committee Report.

Dr. John Anderson stated he did not have further testimony.

Senator Aber moved the amendments BE ADOPTED, seconded by Senator Goodheart. The motion carried unanimously.

Senator Siderius moved the bill AS AMENDED BE CONCURRED IN.

Senator Deschamps seconded the motion which carried unanimously.

Senator Goodheart will carry the bill on the Senate floor.

CONSIDERATION OF HOUSE BILL NO. 600: Revision of the laws relating to the Department of Natural Resources.

Mr. Ted Doney, Deputy Director of the Department of Natural Resources, said their Board had reviewed the bill and had adopted a Resolution endorsing the bill unanimously.

He offered a proposed amendment to the title, which is appended to the minutes. He said the amendment was to assure the bill was in compliance with the constitution.

Senator Goodheart moved the adoption of the amendments, seconded by Senator Deschamps. The motion carried unanimously.

Senator Goodheart moved and Senator Deschamps seconded the bill AS AMENDED BE CONCURRED IN. The motion carried unanimously. Senator Keenan will carry the bill on the Senate floor.

Chairman Keenan announced that House Bill 294 would be heard on Monday, March 4, 1974.

RECODIFICATION OF THE LAWS OF THE DEPARTMENT OF

HEALTH AND ENVIRONMENTAL SCIENCES

This is an explanation of the proposed recodification of the laws pertaining to the Department of Health and Environmental Sciences. The recodification was required in order to reflect the changes made by the Executive Reorganization Act of 1971. Briefly stated, the Reorganization Act:

- Abolished the former State Department of Health and transferred its functions, except those pertaining to enforcement of industrial hygiene laws and the Montana Insecticide, Fungicide, and Rodenticide Act, to the new Department of Health and Environmental Sciences;*
- Abolished the Sanitarians Registration Council and transferred its functions to the new Department; **
- Abolished the Montana Commission on Alcohol and Drug Dependence and transferred its functions to the new Department;
- Transferred the functions of the State Water Pollution Control Council to the new Department;

*The dredge-mining functions of the Department were transferred by the Reorganization Act to the Department of Natural Resources and Conservation; however, this transfer was a nullity because the Dredge-Mining Act was declared unconstitutional by the courts. The transfer of the Montana Insecticide, Fungicide, and Rodenticide Act from the Department of Health to the Department of Agriculture was also a nullity due to the passage in 1971 of a new Pesticide Act (the new Act is primarily the responsibility of the Department of Agriculture).

**Separate legislation approved in 1971 continued the Sanitarians Council as a statutory advisory council. Also created by separate legislation in 1971 was the statutory Occupational Health Advisory Council.

--Transferred the functions of the State Board of Health, except those pertaining to the Montana Insecticide, Fungicide, and Rodenticide Act, dredge-mining regulation, and nurses' employment practices to the new Department;

--Created a Division of Environmental Sciences within the Department, with the Board of Health to assign all functions performed by the Department relating to air pollution control, water pollution control, radiation control, pesticides control, environmental sanitation, solid waste disposal, industrial hygiene, and other related areas to the Division;

--Continued the State Board of Health, renamed it the Board of Health and Environmental Sciences, and designated it as a quasi-judicial board;

--Continued the Air Pollution Control Advisory Council, and the State Water Pollution Control Council, renaming it the Water Pollution Control Advisory Council;

--Created a Director of Health and Environmental Sciences as department head, enumerated his qualifications, and provided that the Director is to carry out his duties as department head, "subject to the concurrence of the Board of Health and Environmental Sciences." (A further discussion of this language--"subject to the concurrence" -- is set out below.)

--Abolished the Venereal Disease and Immunization Advisory Committee, the Migrant Health Advisory Committee, the Hearing Conservation Advisory Committee, the Family Planning Advisory Committee, the Laboratory Advisory Committee, the Joint Staff Committee, the Inter-departmental Council on Mental Retardation, the Radiation Advisory

Committee, and the Hospital and Long Term Care Facilities

Advisory Council.

Laws governing the Department of Health and Environmental Sciences are primarily contained in Title 69, but are also found in Titles 11, 15, 16, 27, 34, 48, 79, 82A, 93, and 95, R.C.M. 1947.

For the most part, only name changes were made in these laws to reflect changes made by the Executive Reorganization Act. In many sections, proposed changes were made in writing style and much archaic and obsolete language was removed.

Many sections were found to be superseded by other laws, including the Reorganization Act, duplicated by other sections, or obsolete and no longer needed and are, therefore, proposed to be repealed.

Also included in this proposed recodification is a deletion of various provisions which are now covered by the Montana Administrative Procedure Act. That Act sets uniform procedures for adopting rules, holding hearings in contested cases, and judicial review of decisions of administrative agencies. By deleting provisions in sections that are now covered by the Administrative Procedure Act, a uniform approach can be established by all administrative bodies, and a great deal of unneeded verbiage can be removed from the laws of Montana. This will add clarity and uniformity to all administrative actions instead of having hundreds of different and conflicting provisions scattered throughout the Revised Codes of Montana.

In this recodification, a method of amending sections to reflect the changes made by the Reorganization Act by merely referring to the section number and instructing the codifier to change the agency name, has been used. This method of amending has been labeled by the Executive Reorganization staff as the "short method" of amending. It can be used when a mere change in

nomenclature is required in an existing statute, to make the statute conform to the changes made by previous legislation, such as the Executive Reorganization Act of 1971. The statute has already been amended by implication. The way the "short method" works can be illustrated in the following example: the Reorganization Act abolished the State Department of Health and transferred its functions to the new Department of Health and Environmental Sciences. Therefore, in Section 34-304, R.C.M. 1947, the references to the Department or Department of Health can be changed by merely saying that the term "Department of Health and Environmental Sciences" shall be substituted in Section 34-304 for the term "Department" or "Department of Health."

Many sections cannot be amended by using the "short method," because other changes must be made in the section. However, by using the short method, it has been estimated that several thousand dollars will be saved in typing and proofing time, and in the printing of the session laws.

The legal staff of the Executive Reorganization Office has thoroughly researched the legality of using this method of amending sections, and is convinced that there is no legal barrier to utilizing this method. The Attorney General has asked for an opinion on the constitutional validity of using the "short method" of amending, and agreed that the method may be legally used, as has been done in this recodification bill.

The Executive Reorganization Act, as amended by the Legislature in the 1971 session, is somewhat vague on exactly who performs certain functions under the health laws. All of the functions of the State Board of Health and of the old Health Department were transferred to the new Department of Health and Environmental Sciences, with the Director of Health and Environmental Sciences as department head. However, the Executive Reorganization Act also

provides that the functions of the Director as the head of the Department are "subject to the concurrence of the Board of Health and Environmental Sciences." (See Section 82A-608 (2) in the Reorganization Act.) Nowhere else in the Act does it say what the Board is supposed to do, once the Department is reorganized. This language is at best unclear, because it does not state what "concurrence" means, whether or not the functions of the Department must be concurred in in advance, or even what specific functions of the Department need to be concurred in by the Board. Consequently, a legal interpretation has been reached that the Board must at least formally concur in those actions of the Department which grant or deny rights or privileges to members of the public. If the Board does not do so, those actions may be invalid.

This vague language has resulted in the Board performing functions it did not perform before reorganization (such as approving the issuance of thousands of routine licenses), and in not being able to devote as much time as it did prior to reorganization on more important matters. Furthermore, the administration of the Department under this vague language becomes unwieldy and is always open to potential attack.

In order to rectify this situation, it is recommended in this recodification that the statutes be expressly amended to clearly delineate and separate the functions of the Board from those of the Department. The best way to accomplish this is by naming either the Board or the Department as the performer of each particular function set out in the statutes.

The decision had to be made in this recodification as to what functions the Board should perform, and what functions the Department should perform. It was concluded, after reviewing the legislative intent of the amendments made by it to the Reorganization Act, that the Board should set certain

standards and perform important quasi-judicial and some quasi-legislative functions. Consequently, guidelines were established for the purpose of making the agency name-changes in this recodification. The guidelines provide that the Board would perform the following functions:

1. Hold hearings on denial or cancellation of food service establishment licenses;
2. Hold hearings on denial or cancellation of transient lodging establishment licenses;
3. Hold hearings on revocation or suspension of sanitarian certificates;
4. Hold hearings on denial or cancellation of ambulance service licenses;
5. Adopt rules and issue orders relating to air pollution;
6. Classify air contaminant sources;
7. Issue permits for equipment, etc. which might contribute to air pollution;
8. Establish emission standards;
9. Hold hearings on enforcement of air pollution standards;
10. Hold hearings on emergency procedures used to control air pollution;
11. Grant variances to air pollution standards;
12. Regulate local air pollution control programs;
13. Approve federal aid applications for local air pollution control programs;
14. Advise the Department in public health matters;
15. Adopt rules and issue orders relating to industrial hygiene;
16. Issue permits for equipment etc. which might contribute to air pollution;

17. Establish limitations on emissions of pollutants to prevent or control occupational diseases;
18. Hold hearings on enforcement of industrial hygiene standards;
19. Hold hearings on emergency procedures used to control industrial hygiene hazards;
20. Grant variances to industrial hygiene standards;
21. Approve federal aid applications for industrial hygiene programs;
22. Direct disclosure of vital statistics information to other government agencies;
23. Hold hearings on denial, modification, suspension, and revocation of permits relating to water pollution control;
24. Control state matching funds for construction of water pollution control facilities;
25. Establish water pollution standards, and classification of water;
26. Hold hearings on establishment of water classification and standards;
27. Hold hearings on enforcement of water pollution standards;
28. Hold hearings on emergency procedures used to control water pollution;
29. Have general supervision over public waters;
30. Hold hearings on denial, suspension, or revocation of hospital or hospital related facilities licenses;
31. Hold hearings on denial or revocation of tourist campground licenses;
32. Hold hearings on granting, suspending, revoking, or amending ionizing radiation licenses, and hold hearings on emergency procedures taken to control radiation.

It is emphasized that this suggested division of responsibility between the Board and Department represents a substantive change from the Reorganization Act. But, it is a necessary change because of the vague language contained in the Reorganization Act. It should also be pointed out that the proposed delineation of duties is essentially a substantiation of traditional Board of Health practices--at least before reorganization. That is, the Board historically devoted virtually all of its meeting time to quasi-judicial and quasi-legislative matters and left administrative affairs to the Director of the Department.

In all, 216 sections are proposed to be amended, 104 of these by the short method. A total of 21 sections were found to be either superseded by other laws, including the Reorganization Act, or obsolete and no longer needed and, therefore, proposed to be repealed.

A section-by-section indication of the proposed disposition of each section of the laws pertaining to the Department of Health and Environmental Sciences is contained in the reference table which follows.

REFERENCE TABLE--RECODIFICATION OF THE LAWS OF THE

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

This table shows the recommended disposition of each section of the Health Laws in the recodification. It indicates whether a section is to be amended, repealed, added, or left unchanged. If a section is proposed to be amended, repealed, or added, the reason for the amendment, repeal, or addition is given. Some sections are proposed to be renumbered; when this is proposed, it is indicated in parentheses following the word "amended."

<u>Section</u>	<u>Change</u>	<u>Reason</u>
11-2412	Amended	Name change--short method
15-2304	Amended	Name change--short method
16-1037	Amended	Name change--short method
27-611	No change	
27-612	Amended	Name and style changes. Deleted reference to executive officer, a position abolished under the Reorganization Act.
27-613	Amended	Name change--short method
27-614	No change	
27-615	Amended	Name change--short method
27-616	Amended	Name and style changes
27-617	No change	
27-618	Repealed	This section, pertaining to appeals to district court, is already covered by the Administrative Procedure Act (APA).
27-619	No change	
27-620	Amended	Name change--short method
27-621	Amended	Name change--short method

Section	Change	Reason
27-622 through 27-624	No change	
27-625	Amended	Name change--short method
27-701	No change	
27-702	Amended	Name and style changes
27-703 through 27-708	No change	
27-709	Amended	Name change--short method
27-710	No change	
27-711	Amended	Name change--short method
27-712	No change	
27-713	Amended	Name change--short method
27-714	No change	
27-715	Amended	Name change--short method
27-716	Amended	Name change--short method
27-717	Amended	Name change--short method
27-718	No change	
27-719	Amended	Name change--short method
27-720	Amended	Name change--short method
27-721	Amended	Name and style changes and deleted material already covered by the APA.
27-722	No change	
27-723	No change	
27-801	Amended	Name and style changes and deleted references to Board of Health and executive officer because the Board has no functions in the chapter and the position of executive officer was abolished in the Reorganization Act.
27-802	Amended	Name change--short method
27-803	No change	

<u>Section</u>	<u>Change</u>	<u>Reason</u>
27-804	Amended	Name and style changes
27-805	* Amended	Name changes--short method
34-301	No change	
34-302	Amended	Name and style changes and deleted reference to executive officer, because this position was abolished by the Reorganization Act.
34-303	No change	
34-304	Amended	Name change--short method
34-305	Amended	Name and style changes and deleted material already covered by the APA:
34-306	Amended	Name change--short method
34-307	Amended	Name change--short method
34-308 through 34-310	No change	
48-135	Amended	Name change--short method
48-137	Amended	Name change--short method
48-140	Amended	Name change--short method
69-1401 through 69-1405	No change	
69-2203 through 69-2205	No change	
69-2315 through 69-2323	No change	
69-3301 through 69-3308	No change	
69-3401	Amended	Name and style changes
69-3402	Amended	Name and style changes. Also, the portions of this section dealing with appointment and terms of members of the Sanitarians Registration Council were stricken and moved to Title 82A, R.C.M. 1947.
69-3403	Amended	Name change--short method

<u>Section</u>	<u>Change</u>	<u>Reason</u>
69-3404	Amended	Name change--short method
69-3405	Amended	Name and style changes and deleted APA material.
69-3406	No change	
69-3407	No change	
69-3408	Repealed	This section, dealing with appeal procedure, is already covered by the APA.
69-3409	Repealed	This section, dealing with service of process, is already covered by the APA.
69-3601 through 69-3604	No change	
69-3605	Amended	Name and style changes and deleted reference to executive officer and license officer, as both positions were abolished by the Reorganization Act.
69-3606	No change	
69-3607	No change	
69-3608	Amended	Name and style changes and material already covered by the APA was deleted.
69-3609	Amended	Name change--short method.
69-3610	Amended	Name and style changes
69-3611 through 69-3613	No change	
69-3904	No change	
69-3905	No change	
69-3906	Amended	Name and style changes. Also, deleted reference to Director of Air Pollution Control, a position abolished by the Reorganization Act, and added a definition of "Department."
69-3907	Amended	Name and style changes. Also, deleted was material pertaining to qualifications, salary, and duties of the Air Pollution Control Director, a position abolished by the Reorganization Act.

Section	Change	Reason
69-3908	Amended	Name and style changes. Stricken from this section and moved to the Reorganization Act (Section 82A-606) were provisions concerning the creation and composition of the Air Pollution Control Advisory Council. Subsection (3), concerning the compensation of Council members, was stricken, because this is already provided by the Reorganization Act. Subsection (6) was modified to limit the Council to an advisory capacity per the Reorganization Act.
69-3909	Amended	Name and style changes. This is a lengthy section dealing with the general powers of the Board of Health concerning air pollution. It is proposed that the powers to be granted to the Department (a portion of subsection (3) and subsections (5) through (11), and (13) through (16)) be stricken here and placed in a new section that follows. The subsections not stricken would be powers of the Board in accordance with the guidelines set out in the introduction to these comments.
69-3909.1	Added	See comments under Section 69-3909.
69-3910	No change	
69-3911	No change	
69-3912	Amended	Name and style changes
69-3913	No change	
69-3914	Amended	Name and style changes
69-3915	Amended	Name and style changes
69-3916	No change	
69-3917	No change	
69-3918	Amended	Name and style changes
69-3919	Amended	Name and style changes and deleted subsection (7), an obsolete grandfather clause pertaining to local air pollution programs.
69-3920	No change	

<u>Section</u>	<u>Change</u>	<u>Reason</u>
69-3921	Amended	Name and style changes
69-3922	No change	
69-3923	Amended	Name and style changes
69-4001	No change	
69-4002	Amended	Name and style changes. Also, the terms "board" and "department" were added to this definition section for ease of reference.
69-4003	No change	
69-4004	Amended	Name change--short method
69-4005	Amended	Name change--short method
69-4006	No change	
69-4007	Amended	Name change--short method
69-4008	No change	
69-4009	Amended	Name change--short method
69-4010	Amended	Style changes
69-4101	Repealed	This section creates the State Department of Health; it is obsolete, because that Department was abolished by the Reorganization Act.
69-4102	Amended	Name and style changes and deleted definition of executive officer, a position abolished by the Reorganization Act.
69-4103	Repealed	This section provides for the appointment, composition, and terms of the members of the Board of Health. The terms of Board members are already covered by the Reorganization Act. Provisions concerning the composition of the Board were moved to the Reorganization Act.
69-4104	Amended	Name and style changes. Stricken from subsection (1) was a provision for selection of the Board chairman; under the Reorganization Act this is the duty of the Governor. Subsection (3), which provides the compensation for Board members, was deleted as it is already covered by Section 82A-112 (1) (e).

<u>Section</u>	<u>Change</u>	<u>Reason</u>
69-4105	Repealed	This section is a general, but incomplete enumeration of the laws administered by the Department; it will be covered more fully by a new Section 82A-601.1.
69-4106	Amended	Name and style changes. Also, deleted from this section were subsections (c) through (g) of subsection (1) and subsection (2). Subsections (1) (c) and (2) are proposed Department functions, moved to Section 69-4110; the other subsections are duties covered elsewhere in the law.
69-4107	Repealed	This section, which provides for an executive officer of the Department and his qualifications, is obsolete and already covered by the Reorganization Act.
69-4108	Repealed	This section provides the procedure for the removal of the executive officer; this position has been abolished and procedure for removal of department heads is covered by the Reorganization Act.
69-4109	Repealed	This section provides for the powers and duties of the executive officer; the general powers of department heads are already covered by Section 82A-107 of the Reorganization Act.
69-4110	Amended	Style changes. Stricken was subsection (1), regarding internal units of the Department; this is already covered by 82A-107. Subsections (1) (c) and (2) were added from Section 69-4106 in order that all departmental functions be listed in the same section.
69-4110.1	Amended	Name change--short method
69-4111	Amended	Name and style changes
69-4112	Amended	Name and style changes
69-4113	Repealed	This section authorizes the executive officer to act for the Board in emergencies regarding communicable diseases. By giving the Department this enforcement power in the previous section, this section is obsolete.
69-4114	No change	
69-4115	No change	

<u>Section</u>	<u>Change</u>	<u>Reason</u>
69-4116	Amended	Name change--short method
69-4117	Amended	Name and style changes
69-4118	Amended	Name change--short method
69-4204	No change	
69-4206	No change	
69-4207	No change	
69-4208	Amended	Name and style changes and deleted references to Director of the Occupational Health program and executive officer; both positions were abolished by the Reorganization Act.
69-4209	Amended	Name change. Deleted from this section was a provision for the Department to administer the Occupational Health Act under policy guidance of the Board (see comments in the introduction). Also stricken were references to a Director of Occupational Health, a position abolished by the Reorganization Act, and authority of the executive officer to employ personnel for the program (this is a power already contained in the Reorganization Act).
69-4210	Amended	Name and style changes and provisions for the composition and terms of the Occupation Health Advisory Committee were moved to new Section 82A-610.
69-4211	Amended	Name and style changes. This is a lengthy section dealing with powers of the Board of Health concerning occupational health. It is proposed that the powers to be granted to the Department (a portion of subsection (3) and subsections (5) through (9) and (11) through (13) be stricken here and moved to a new section that follows. The subsections not stricken would be Board powers in accordance with the guidelines set out in the introduction to these comments.
69-4211.1	Added	This section describes departmental powers concerning occupational safety. See comments under Section 69-4211.
69-4212	No change	

<u>Section</u>	<u>Change</u>	<u>Reason</u>
69-4213	Amended	Name and style changes
69-4214	No change	
69-4215	Amended	Name and style changes
69-4216	Amended	Name and style changes
69-4217	No change	
69-4218	No change	
69-4219	Amended	Name and style changes
69-4220	No change	
69-4221	Amended	Name and style changes
69-4301	No change	
69-4302	No change	
69-4303	Amended	Name change--short method
69-4304	Amended	Name and style changes. Also, stricken was a provision that the Department is to carry out certain functions regarding tuberculosis under the policy guidance of the Board. (See the introduction to these comments.)
69-4305	No change	
69-4306	Amended	Name change--short method
69-4307 through 69-4315	No change	
69-4316	Amended	Name change
69-4317	Amended	Name and style changes
69-4401	Amended	Name and style changes and deleted references to state registrar, a position abolished by the Reorganization Act.
69-4402	Amended	Name change--short method
69-4403	Amended	Name change--short method
69-4404	Amended	Name and style changes. Also, stricken was a sentence providing for Board review of departmental decisions regarding vital statistics. (See introduction to these comments.)

<u>Section</u>	<u>Change</u>	<u>Reason</u>
69-4405	Amended	Name and style changes
69-4406	Amended	Name change--short method
69-4407	Amended	Name change--short method
69-4408	No change	
69-4409	Amended	Name and style changes
69-4410 through 69-4414	Amended	Name change--short method
69-4415	No change	
69-4416 through 69-4418	Amended	Name change--short method
69-4419	No change	
69-4420	Amended	Name and style changes
69-4421	Amended	Name and style changes
69-4422	No change	
69-4423	Amended	Name change--short method
69-4424	No change	
69-4425	Amended	Name change--short method
69-4426 through 69-4430	No change	
69-4431 through 69-4435	Amended	Name change--short method
69-4436	No change	
69-4437	No change	
69-4501	No change	
69-4502	Amended	Name and style changes. Stricken from this section was a provision for Board approval of Departmental supervision of local health boards. (See introduction to these comments.)
69-4503	Amended	Name and style changes. Stricken from this section was a provision for Board approval of Departmental receipt of federal funds. (See introduction to these comments.)

<u>Section</u>	<u>Change</u>	<u>Reason</u>
69-4504 through 69-4508	No change	
69-4509	Amended	Name change--short method
69-4510	Amended	Name and style changes
69-4511	Amended	Name change--short method
69-4512 through 69-4518	No change	
69-4519	Amended	Name change--short method
69-4601	No change	
69-4602	Amended	Name and style changes. Also, stricken was a provision that the Board is to provide policy guidance to the Department regarding venereal disease programs. (See introduction to these comments.)
69-4603	Amended	Name and style changes. Stricken was a provision for Board approval of Departmental receipt of federal funds. (See introduction to these comments.)
69-4604 through 69-4609	No change	
69-4610	Amended	Name change--short method
69-4611	No change	
69-4612	No change	
69-4613	Amended	Name change--short method
69-4614	No change	
69-4615	No change	
69-4616	Amended	Name change--short method
69-4617	Amended	Name change--short method
69-4701	No change	
69-4702 through 69-4706	Amended	Name change--short method

<u>Section</u>	<u>Change</u>	<u>Reason</u>
69-4707	No change	
69-4801	No change	
69-4802	Amended	Name and style changes and references to executive officer and Director of Water Pollution Control were deleted. These positions were abolished by the Reorganization Act.
69-4804	No change	
69-4805	Amended	Name and style changes. Stricken was a provision for Board policy supervision of the Department regarding water pollution. (See introduction to these comments.) Also, deleted were provisions pertaining to the Director of Water Pollution Control, a position already abolished.
69-4806	No change	
69-4807.1	No change	
69-4808.1	Amended	Name and style changes
69-4808.2	Amended	Name and style changes. Subsection (1) (i), pertaining to enforcement of water pollution laws, was stricken and moved to 69-4809.1 as a Department function. (See introduction to these comments.)
69-4809.1	Amended	Name and style changes. (See comments under Section 69-4808.2.)
69-4810	Repealed	This section deals with the creation and composition of the Water Pollution Advisory Council; its relevant provisions have been moved to Section 82A-607.
69-4811	Repealed	This section deals with terms and compensation of members of the Water Pollution Advisory Council. It has been superseded by Section 82A-607 and is therefore obsolete.
69-4812	Amended	Name and style changes and inserted subsection (4), taken from Section 82A-607, which makes clear the Water Pollution Control Advisory Council sits only in an advisory capacity to the Department.

<u>Section</u>	<u>Change</u>	<u>Reason</u>
69-4813	Repealed	This section states that the Water Council may make recommendations to the Board of Health. This provision is already covered by the Reorganization Act.
69-4814	No change	
69-4820	Amended	Name and style changes and deleted provisions covered by the Administrative Procedure Act
69-4821	Amended	Name and style changes and deleted provisions covered by the Administrative Procedure Act
69-4822	No change	
69-4823	Amended	Name and style changes
69-4824	No change	
69-4825	Amended	Name and style changes
69-4826	Amended	Name and style changes. Stricken was a provision for the Board to direct the Department to investigate alleged violations of the water pollution laws. (See introduction to these comments.)
69-4827	No change	
69-4901	No change	
69-4902	No change	
69-4903	Amended	Name and style changes
69-4904	Amended	Name and style changes. Stricken was a provision for Board approval of fees charged by the Department to analyze and inspect waters. (See introduction to these comments.)
69-4905	No change	
69-4906	No change	
69-4907	Amended	Name and style changes
69-4908	No change	
69-5001	No change	
69-5002	No change	

<u>Section</u>	<u>Change</u>	<u>Reason</u>
69-5003	Amended	Name change--short method
69-5004	No change	
69-5005	Amended	Name change--short method
69-5101	No change	
69-5102	Amended	Name change--short method
69-5103 through 69-5106	No change	
69-5201	No change	
69-5202	No change	
69-5203	Amended	Name change--short method
69-5204	No change	
69-5205	Amended	Name change--short method
69-5206	No change	
69-5207	Amended	Name change--short method
69-5208	Amended	Name change--short method
69-5209	No change	
69-5210	Amended	Name and style changes, deleted material covered by the A.P.A. and added a provision, concerning where appeals are to be taken, from Section 69-5211.
69-5211	Repealed	Most of this section is covered by the A.P.A.; the provision which is not covered--the provision that appeals shall be filed in the district court where a hospital is located--has been moved to Section 69-5210.
69-5212	Amended	Name change--short method
69-5213	Amended	Name and style changes
69-5214	Repealed	This section, which pertains to the Hospital and Long-Term Care Facility Advisory Council, is obsolete. The Council was abolished by Section 82A-609 (9).

<u>Section</u>	<u>Change</u>	<u>Reason</u>
69-5215	Repealed	This section pertains to the terms etc. of the Hospital and Long-Term Care Facility Advisory Council. (See comments under Section 69-5214.)
69-5216	Amended	Name changes and deletion of references to the Hospital and Long-Term Care Facility Advisory Council.
69-5217	Amended	Name change--short method
69-5218	No change	
69-5219	Amended	Name change--short method
69-5219.1	Amended	Name change--short method
69-5220	Amended	Name change
69-5221	No change	
69-5301	Amended	Style changes and deleted subsection (7), which defines council as the Hospital and Long-Term Care Facility Council. The Council was abolished by Section 82A-609 (9).
69-5302	Amended	Name and style changes. Stricken was a provision for Board approval of Department agreements regarding medical facilities. (See introduction to these comments.)
69-5303	Amended	Name and style changes. Stricken was a provision for Board approval of Department agreements regarding medical facilities. (See introduction to these comments.)
69-5304	Amended	Name change--short method
69-5305	Amended	Name and style changes. Stricken was a provision for Board approval of Department hospital plans. (See introduction to these comments.)
69-5306	Amended	Name change--short method
69-5307	Amended	Name changes and deletion of reference to the Council (Hospital and Long-Term Care Facility)
69-5308	Amended	Name change--short method

<u>Section</u>	<u>Change</u>	<u>Reason</u>
69-5309	No change	
69-5310	Amended	Name change--short method
69-5311	Amended	Name change--short method
69-5312	No change	
69-5313	No change	
69-5401 through 69-5403	Amended	Name change--short method
69-5404	No change	
69-5405	No change	
69-5406	Amended	Name change--short method
69-5407	Amended	Name change--short method
69-5408	No change	
69-5501	No change	
69-5502	No change	
69-5503 through 69-5508	Amended	Name change--short method
69-5509	No change	
69-5510	Amended	Name change--short method
69-5511	Amended	Name change--short method
69-5601	No change	
69-5602	Amended	Name change--short method
69-5603	Amended	Name change--short method
69-5604	No change	
69-5605	Amended	Name change--short method
69-5606	Amended	Name changes
69-5607	Amended	Name change--short method
69-5701	Amended	Name and style changes
69-5801	No change	

<u>Section</u>	<u>Change</u>	<u>Reason</u>
69-5802	No change	
69-5803	Amended	Name change--short method
69-5804	Amended	Name and style changes and deleted subsection (3) (d), which refers to proceedings under Section 69-5805, which is proposed to be repealed.
69-5805	Repealed	This section pertains to the Radiation Advisory Committee which was abolished by Section 82A-609 (8).
69-5806 through 69-5810	Amended	Name change--short method
69-5811	No change	
69-5812	Amended	Name and style changes
69-5813	Amended	Name change--short method
69-5814	Amended	Name change--short method
69-5815	No change	
69-5816	Amended	Name change--short method
69-5901	No change	
69-5902	Amended	Name and style changes
69-5903	Amended	Name and style changes and struck provisions concerning the composition and terms of the Board of Water and Waste Water Operators; these provisions will be moved to the Re-organization Act
69-5904	Amended	Name change--short method
69-5905	Amended	Name change--short method
69-5906	Amended	Name and style changes and deleted obsolete grandfather clause
69-5907	Amended	Name and style changes
69-5908	Amended	Name and style changes
69-5909	Amended	Name and style changes

<u>Section</u>	<u>Change</u>	<u>Reason</u>
69-5910	Amended	Name and style changes
69-5911	Amended	Name and style changes
69-5912	No change	
69-6001 through 69-6009	No change	
69-6010	Amended	Name and style changes
69-6011 through 69-6013	No change	
Title 69, Chapter 61	No change	
69-6201	No change	
69-6202	Repealed	This section pertains to the Commission on Alcohol and Drug Dependence, which was abolished by Section 82A-602 (5).
69-6203	Amended	Name and style changes
69-6204 through 69-6207	No change	
Title 69, Chapter 63	No change	
Title 69, Chapter 65	No change	
79-1601	No change	
79-1602	Amended	Name and style changes
79-1603	No change	
82A-601	Amended	Style changes and incorporated wording from Section 82A-608 outlining appointment procedure and stating the Director of the Department of Health and Environmental Sciences should have the qualifications found in Section 82A-608.
82A-601.1	Added	A section of this type will be added to the laws of each department created in the Executive Reorganization Act (Title 82A). The purpose of this section is to catalog in one section the primary laws the Department administers. This approach was used in the recodification of the Health Laws in 1967.

<u>Section</u>	<u>Change</u>	<u>Reason</u>
82A-602	Repealed	This section abolished certain agencies and transferred their functions to the Department of Health and Environmental Sciences. All agency abolishment and transfer sections in the Executive Reorganization Act are being repealed, as the transfer will have taken place by 1973, and these sections will then be obsolete.
82A-603	Repealed	This section transferred additional functions to the Department. (See Section 82A-602 for the reason for the repeal of this section.)
82A-604	Amended	This section provides that the Board shall assign all environmental functions which the Department performs to the Division of Environmental Sciences. The section is proposed to be amended to give the Department the function, because it should be an administrative determination, not a policy determination.
82A-605	Amended	This section created the Board of Health and Environmental Sciences. The creation of all agencies, the composition of all boards, and the qualifications of all board members will be placed in the Executive Reorganization Act (Title 82A), so that a quick determination can be made of all agencies from one place in the Revised Codes. The composition of the Board and the qualifications of board members have been taken from Section 69-4103.
82A-606	Amended	This section continued the Air Pollution Advisory Council. The composition of the Council and the qualifications of its members were added from Section 69-3908. Subsection (4), which provides the function of the Council, has been deleted and moved to Section 69-3908.
82A-607	Amended	This section created the Water Pollution Advisory Council. The composition of the Council and the qualifications of its members were added from Section 69-4810. Subsection (4), which provides the function of the Council, has been deleted and moved to Section 69-4812.

<u>Section</u>	<u>Change</u>	<u>Reason</u>
82A-608	Amended	Name and style changes. Appointment procedure for the Director was stricken and moved to Section 82A-601. Subsection (2), which applies Section 82A-107 (Duties and Powers of Department Heads) to the Director subject to the concurrence of the Board of Health and Environmental Sciences, was deleted. (See the introduction to these comments.)
82A-609	Repealed	This section abolished several agencies; its function is now complete, and the section is obsolete and can be repealed.
82A-610	Added	This section creates and provides for the composition of the Occupational Health Advisory Committee. The provisions are taken from Section 69-4210 and are included in Title 82A for the reasons found in the comment under Section 82A-605.
82A-611	Added	This section creates and provides for the composition of the Sanitarians Advisory Council. The provisions are taken from Section 69-3402 and are included in Title 82A for the reasons found in the comment under Section 82A-605.
82A-612	Added	This section creates and provides for the composition of the Board of Water and Waste Water Operators. The provisions are taken from Section 69-5903 and are included in Title 82A for the reasons found in the comment under Section 82A-605. This Board has quasi-judicial functions and possibly other functions, so it must be allocated to a department. The 1971 Legislature attached the Board to the Board of Health and Environmental Sciences; this recodification allocates it to the Department for administrative purposes only in subsection (4) of this section. This is a minor substantive change.
83-108	Amended	Name changes
83-109	Amended	Name changes
93-101 -4	Amended	Name change--short method
95-802	Amended	Name change--short method

March 13, 1973

PUBLIC HEALTH, WELFARE AND SAFETY
COMMITTEE

The meeting was called to order at 10:30 a.m., with all members present except Representatives Fagg and Brown, who were excused.

House Resolution 32 - Rep. Driscoll, chief sponsor, explained that the resolution requests the federal government to reconsider some new regulations that reduce the help the government gives to mentally retarded people. There were no opponents. There is a similar resolution pending in the Senate.

House Bill 595 - Rep. Marbut acted as chief sponsor and explained that this is a reorganization bill which attempts to pick up loose ends. Mr. George Bousliman, Executive Reorganization, Dr. John Anderson, Department of Health and Environmental Sciences, Charles O'Donnell, attorney for the Department, Don Willums and Norm Grossfield, attorney for Executive Reorganization testified as proponents and submitted proposed amendments. Their testimony is attached.

Representative Zimmer moved that House Resolution 32 BE ADOPTED. The motion was seconded and passed unanimously (Reps. Fagg, Brown and Marbut excused).

Representative Healy moved that the Chairman appoint a subcommittee of three to study House Bill 595. After some discussion, he withdrew his motion. The committee decided to study the bill individually and meet again Thursday to go through the bill.

There being no further business, the meeting was adjourned at 11:40 a.m.


ROBERT E. LEE, Chairman

NAME

George Bousliman

BILL No. HB 595

ADDRESS

DATE 3-13-73

WHOM DO YOU REPRESENT? Executive Reorganization

SUPPORT? ☒ OPPOSE? ☐ AMEND? ☒PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Attached explanation and amendments.

This bill revises laws for Department of Health and Environmental Sciences. It is a recodification bill also. There is a very clear delineation between the duties of the department and the board. Clears up the confusion left by 1971 laws.

This bill would make the board the final arbiter of all disputes. The board would be responsible for standards, rules and regulations in the area of water and air pollution and industrial hygiene

The bill also deletes procedural rules which are already in another act.

The "short amendment" deletes the requirement that the whole section of the code be typed out when a name is changed, etc. Attorney General OK'd this.

The department wants language inserted to allow it to utilize local health people to carry out the functions of the department.

RECODIFICATION OF THE LAWS OF THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

This is an explanation of the proposed recodification of the laws pertaining to the Department of Health and Environmental Sciences. The recodification was required in order to reflect the changes made by the Executive Reorganization Act of 1971. Briefly stated, the Reorganization Act:

- Abolished the former State Department of Health and transferred its functions, except those pertaining to enforcement of industrial hygiene laws and the Montana Insecticide, Fungicide, and Rodenticide Act, to the new Department of Health and Environmental Sciences;*
- Abolished the Sanitarians Registration Council and transferred its functions to the new Department;**
- Abolished the Montana Commission on Alcohol and Drug Dependence and transferred its functions to the new Department;
- Transferred the functions of the State Water Pollution Control Council to the new Department;

*The dredge-mining functions of the Department were transferred by the Reorganization Act to the Department of Natural Resources and Conservation; however, this transfer was a nullity because the Dredge-Mining Act was declared unconstitutional by the courts. The transfer of the Montana Insecticide, Fungicide, and Rodenticide Act from the Department of Health to the Department of Agriculture was also a nullity due to the passage in 1971 of a new Pesticide Act (the new Act is primarily the responsibility of the Department of Agriculture).

**Separate legislation approved in 1971 continued the Sanitarians Council as a statutory advisory council. Also created by separate legislation in 1971 was the statutory Occupational Health Advisory Council.

- Transferred the functions of the State Board of Health, except those pertaining to the Montana Insecticide, Fungicide, and Rodenticide Act, dredge-mining regulation, and nurses' employment practices to the new Department;
- Created a Division of Environmental Sciences within the Department, with the Board of Health to assign all functions performed by the Department relating to air pollution control, water pollution control; radiation control, pesticides control, environmental sanitation, solid waste disposal, industrial hygiene, and other related areas to the Division;
- Continued the State Board of Health, renamed it the Board of Health and Environmental Sciences, and designated it as a quasi-judicial board;
- Continued the Air Pollution Control Advisory Council, and the State Water Pollution Control Council, renaming it the Water Pollution Control Advisory Council;
- Created a Director of Health and Environmental Sciences as department head, enumerated his qualifications, and provided that the Director is to carry out his duties as department head, "subject to the concurrence of the Board of Health and Environmental Sciences." (A further discussion of this language--"subject to the concurrence" -- is set out below.)
- Abolished the Venereal Disease and Immunization Advisory Committee, the Migrant Health Advisory Committee, the Hearing Conservation Advisory Committee, the Family Planning Advisory Committee, the Laboratory Advisory Committee, the Joint Staff Committee, the Interdepartmental Council on Mental Retardation, the Radiation Advisory

Committee, and the Hospital and Long Term Care Facilities
Advisory Council.

Laws governing the Department of Health and Environmental Sciences are primarily contained in Title 69, but are also found in Titles 11, 15, 16, 27, 34, 48, 79, 82A, 93, and 95, R.C.M. 1947.

For the most part, only name changes were made in these laws to reflect changes made by the Executive Reorganization Act. In many sections, proposed changes were made in writing style and much archaic and obsolete language was removed.

Many sections were found to be superseded by other laws, including the Reorganization Act, duplicated by other sections, or obsolete and no longer needed and are, therefore, proposed to be repealed.

Also included in this proposed recodification is a deletion of various provisions which are now covered by the Montana Administrative Procedure Act. That Act sets uniform procedures for adopting rules, holding hearings in contested cases, and judicial review of decisions of administrative agencies. By deleting provisions in sections that are now covered by the Administrative Procedure Act, a uniform approach can be established by all administrative bodies, and a great deal of unneeded verbiage can be removed from the laws of Montana. This will add clarity and uniformity to all administrative actions instead of having hundreds of different and conflicting provisions scattered throughout the Revised Codes of Montana.

In this recodification, a method of amending sections to reflect the changes made by the Reorganization Act by merely referring to the section number and instructing the codifier to change the agency name, has been used. This method of amending has been labeled by the Executive Reorganization staff as the "short method" of amending. It can be used when a mere change in

nomenclature is required in an existing statute, to make the statute conform to the changes made by previous legislation, such as the Executive Reorganization Act of 1971. The statute has already been amended by implication. The way the "short method" works can be illustrated in the following example: the Reorganization Act abolished the State Department of Health and transferred its functions to the new Department of Health and Environmental Sciences. Therefore, in Section 34-304, R.C.M. 1947, the references to the Department or Department of Health can be changed by merely saying that the term "Department of Health and Environmental Sciences" shall be substituted in Section 34-304 for the term "Department" or "Department of Health."

Many sections cannot be amended by using the "short method," because other changes must be made in the section. However, by using the short method, it has been estimated that several thousand dollars will be saved in typing and proofing time, and in the printing of the session laws.

The legal staff of the Executive Reorganization Office has thoroughly researched the legality of using this method of amending sections, and is convinced that there is no legal barrier to utilizing this method. The Attorney General has asked for an opinion on the constitutional validity of using the "short method" of amending, and agreed that the method may be legally used, as has been done in this recodification bill.

The Executive Reorganization Act, as amended by the Legislature in the 1971 session, is somewhat vague on exactly who performs certain functions under the health laws. All of the functions of the State Board of Health and of the old Health Department were transferred to the new Department of Health and Environmental Sciences, with the Director of Health and Environmental Sciences as department head. However, the Executive Reorganization Act also

provides that the functions of the Director as the head of the Department are "subject to the concurrence of the Board of Health and Environmental Sciences." (See Section 82A-608 (2) in the Reorganization Act.) Nowhere else in the Act does it say what the Board is supposed to do, once the Department is reorganized. This language is at best unclear, because it does not state what "concurrence" means, whether or not the functions of the Department must be concurred in in advance, or even what specific functions of the Department need to be concurred in by the Board. Consequently, a legal interpretation has been reached that the Board must at least formally concur in those actions of the Department which grant or deny rights or privileges to members of the public. If the Board does not do so, those actions may be invalid.

This vague language has resulted in the Board performing functions it did not perform before reorganization (such as approving the issuance of thousands of routine licenses), and in not being able to devote as much time as it did prior to reorganization on more important matters. Furthermore, the administration of the Department under this vague language becomes unwieldy and is always open to potential attack.

In order to rectify this situation, it is recommended in this recodification that the statutes be expressly amended to clearly delineate and separate the functions of the Board from those of the Department. The best way to accomplish this is by naming either the Board or the Department as the performer of each particular function set out in the statutes.

The decision had to be made in this recodification as to what functions the Board should perform, and what functions the Department should perform. It was concluded, after reviewing the legislative intent of the amendments made by it to the Reorganization Act, that the Board should set certain

standards and perform important quasi-judicial and some quasi-legislative functions. Consequently, guidelines were established for the purpose of making the agency name-changes in this recodification. The guidelines provide that the Board would perform the following functions:

1. Hold hearings on denial or cancellation of food service establishment licenses;
2. Hold hearings on denial or cancellation of transient lodging establishment licenses;
3. Hold hearings on revocation or suspension of sanitarian certificates;
4. Hold hearings on denial or cancellation of ambulance service licenses;
5. Adopt rules and issue orders relating to air pollution;
6. Classify air contaminant sources;
7. Issue permits for equipment, etc. which might contribute to air pollution;
8. Establish emission standards;
9. Hold hearings on enforcement of air pollution standards;
10. Hold hearings on emergency procedures used to control air pollution;
11. Grant variances to air pollution standards;
12. Regulate local air pollution control programs;
13. Approve federal aid applications for local air pollution control programs;
14. Advise the Department in public health matters;
15. Adopt rules and issue orders relating to industrial hygiene;
16. Issue permits for equipment etc. which might contribute to air pollution;

17. Establish limitations on emissions of pollutants to prevent or control occupational diseases;
18. Hold hearings on enforcement of industrial hygiene standards;
19. Hold hearings on emergency procedures used to control industrial hygiene hazards;
20. Grant variances to industrial hygiene standards;
21. Approve federal aid applications for industrial hygiene programs;
22. Direct disclosure of vital statistics information to other government agencies;
23. Hold hearings on denial, modification, suspension, and revocation of permits relating to water pollution control;
24. Control state matching funds for construction of water pollution control facilities;
25. Establish water pollution standards, and classification of water;
26. Hold hearings on establishment of water classification and standards;
27. Hold hearings on enforcement of water pollution standards;
28. Hold hearings on emergency procedures used to control water pollution;
29. Have general supervision over public waters;
30. Hold hearings on denial, suspension, or revocation of hospital or hospital related facilities licenses;
31. Hold hearings on denial or revocation of tourist campground licenses;
32. Hold hearings on granting, suspending, revoking, or amending ionizing radiation licenses, and hold hearings on emergency procedures taken to control radiation.

It is emphasized that this suggested division of responsibility between the Board and Department represents a substantive change from the Reorganization Act. But, it is a necessary change because of the vague language contained in the Reorganization Act. It should also be pointed out that the proposed delineation of duties is essentially a substantiation of traditional Board of Health practices--at least before reorganization. That is, the Board historically devoted virtually all of its meeting time to quasi-judicial and quasi-legislative matters and left administrative affairs to the Director of the Department.

In all, 216 sections are proposed to be amended, 104 of these by the short method. A total of 21 sections were found to be either superseded by other laws, including the Reorganization Act, or obsolete and no longer needed and, therefore, proposed to be repealed.

A section-by-section indication of the proposed disposition of each section of the laws pertaining to the Department of Health and Environmental Sciences is contained in the reference table which follows.

PROPOSED AMENDMENTS TO HOUSE BILL 595

On page 1 insert after the number 69-4216, the number 69-4218.

On page 2, add on line 8 after the word "THE", the following material:

"CODIFICATION AND GENERAL"

On page 5, delete on line 4 the word "sixth" and insert in lieu thereof the word "tenth (10)"

On page 25, delete all the material on lines 5 and 6. On page 25, delete on line 7 the term "(3)" and insert in lieu thereof the term "(2)"; on page 25, delete on line 11 the term "(4)" and insert in lieu thereof the term "(3)"; on page 25, delete on line 13 the term "(5)" and insert in lieu thereof the term "(4)"; on page 25, delete on line 18 the term "(6)" and insert in lieu thereof the term "(5)".

On page 25, delete on line 23 the term "(1)"

On page 26, delete all the material on lines 13, 14, 15, 23, 24, and 25

On page 27, delete all the material on lines 1, 2, 3, and 4

On page 58, add between lines 7 and 8 the following material:

"(17) Have the power to use personnel of local departments of health to assist in the administration of laws relating to public health."

On page 61, delete all the material on lines 19, 20, and 21

On page 62, delete all the material on lines 17, 18, and 19

On page 63, delete all the material on lines 6 and 7, and on lines 16 through 25

On page 64, delete all the material on lines 1 through 25

On page 65, delete all the material on lines 1 through 4

Renumber sections 39, 40, 41, 42, and 43 accordingly

On page 72, insert between lines 9 and 10 a new section to read as follows:

"Section 43. Section 69-4218, R.C.M. 1947, is amended to read as follows:

69-4218. Hearings and judicial review. (1) No rule or amendment or repeal thereof shall take effect except after public hearing on due notice, ~~and after the advisory committee has been afforded not less than thirty (30) days prior to publication of the proposed text to comment thereon.~~ Such notice shall be given by public advertisement not less than twenty (20) or more than thirty (30) days prior to the date set for such the hearing.

(2) Nothing in this section shall ~~be construed to require~~ requires a hearing prior to the issuance of an emergency order pursuant to section ~~116-69-4216~~ of this act 69-4216.

(3) Any person aggrieved by any order of the board may apply for rehearing upon one (1) or more of the following grounds, and upon no other grounds:

(a) The board acted without or in excess of its powers.

(b) The order was procured by fraud.

(c) The order is contrary to the evidence.

(d) The applicant has discovered new evidence, material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.

(e) Competent evidence was excluded to the prejudice of the applicant. The petition must be in such form and filed in such time as the board shall prescribe.

(4)--(a)--Within thirty (30) days after the application for rehearing is denied, or, if the application is granted, within thirty (30) days after the decision on the rehearing, any party aggrieved thereby may appeal to the district court of any judicial district of the state which is the situs of property affected by the order.

(b)--The appeal shall be taken by serving a written notice of appeal upon the executive officer of the board, which service shall be made by the delivery of a copy of the notice to such officer, and by filing the original with the clerk of the court to which the appeal is taken.--Immediately upon service upon the board, the board shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the board.--Immediately upon receiving the certified record, the district court shall fix a day for filing of briefs and hearing arguments on the cause, and shall cause a notice of the same to be served upon the board and the appellant.

(c)--The court shall hear and decide the cause upon the record of the board.--The court shall determine whether or not the board regularly pursued its authority, whether or not the findings of the board were supported by substantial competent evidence and whether or not the board made error of law prejudicial to the appellant.

(5)--Either the board or the person aggrieved may appeal from the decision of the district court to the supreme court.--The proceedings before the supreme court shall be limited to a review of the record of the hearing before the board and of the district court's review of that record."

On page 123, delete on line 21 the term "1969" and insert in lieu thereof the term "1967".

On page 123, reinstate the deleted material on lines 22 through 25.

On page 137, delete on line 5 all the material after the word "who" and delete all the material on line 6 and insert in lieu thereof the words "are licensed to practice medicine in this state,"

On page 137, delete on line 7 all the material after the word "who" and delete all the material on line 8, and insert in lieu thereof the words: "is licensed to practice dentistry in this state,"

On page 138, delete all the material on lines 6 through 9.

On page 138, delete on line 10 the words "(b) Ten" and insert in lieu thereof the words "(2) The council consists of ten"

On page 139, delete on line 23 the word "twelve (12)" and insert in lieu thereof the word "eleven (11)"

On page 139, delete all the material on line 25

On page 140, delete all the material on line 1

On page 140, delete on line 2 the term "(b)" and insert in lieu thereof the term "(a)"; on page 140, delete on line 3 the term "(c)" and insert in lieu thereof the term "(b)"; on page 140, delete on line 5 the term "(d)" and insert in lieu thereof the term "(c)"; on page 140, delete on line 6 the term "(e)" and insert in lieu thereof the term "(d)"

On page 141, delete all the material on line 25

On page 142, delete all the material on lines 1 through 22

On page 150, add on line 10 after the number "69-4113," the number "69-4210,"

On page 150, add on line 14 the following: "Section 119. This act is effective on passage and approval."

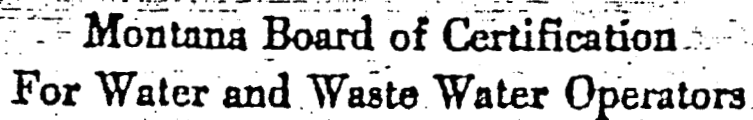
NAME John Anderson MD BILL No. 595
ADDRESS 2216 6th DATE _____

WHOM DO YOU REPRESENT? Dept of Health & Env. Sciences

SUPPORT? ☒ OPPOSE? _____ AMEND? ☒

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

This bill answers the need to clarify exactly what the duties of the board and the department are. The 1971 laws are very confusing. The lines of authority must be clear, and this bill with the proposed amendments will do this.



Capitol Postoffice

HELENA, MONTANA 59601

March 13, 1973

SUGGESTED AMENDMENTS TO H.B. 595

Amend on page 121, Section 89, line 9 of the introduced bill by reinserting the stricken words "previously in charge or",

And further amend Section 89, page 123, line 21 of the introduced bill following the date "July 1," by deleting the date "1969" and inserting the date "1967".

And further amend Section 89, page 173, lines 22 through 25 by reinserting the stricken material.

And further amend Section 89, page 124, line 1 by reinserting the stricken words "systems on" and inserting the following new material "July 1, 1967.",

And further amend Section 82, page 124, lines 1 and 2 by reinserting the following stricken material "A certificate so issued will be valid only in that plant."

NAME Don Williams

BILL NO. 595

ADDRESS _____

DATE 3-13-73

WHOM DO YOU REPRESENT? Dept. employee and Director of Board of
Certification for water and waste water operators.

SUPPORT? X OPPOSE? _____ AMEND? X

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Attached

HOUSE BILL NO. 595

PROPOSED AMENDMENT

Amend the original introduced House Bill No. 595, on page 123, line 22, by inserting the words and figures as follows:

"Certificates of proper classification may be issued without examination to the person or persons certified by the governing board or owner to have been in responsible charge of the water and waste water plants and water distribution systems on July 1, 1969. A certificate so issued will be valid only in that plant."

NAME CHARLES M. DONNELLY BILL No. AB 570

ADDRESS Alhambra DATE 1/13/73

WHOM DO YOU REPRESENT? Representing Alhambra

SUPPORT? ✓ OPPOSE? AMEND? ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Concur in previous testimony. Urge passage this session.

NAME Norm Grossfield BILL NO. 294

ADDRESS _____ DATE 3-13-73

WHICH DO YOU REPRESENT? Attorney for E. P. Organization

SUPPORT? _____ OPPOSE? _____ AMEND? _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

March 15, 1973

PUBLIC HEALTH, WELFARE & SAFETY
COMMITTEE

The meeting was called to order at 10:30 a.m., with all members present except Representatives Norman, Bennetts, Fagg, Hall, Healy, McKittrick and Yardley, who were excused.

The committee discussed House Bill 595 and the proposed amendments (attached) from Mr. Bousliman. A letter from John Bartlett, regarding how the Board of Health feels about this bill is attached. They want to be sure the 32 duties of the Board are clearly in the bill. Mr. Bousliman stated that they are.

Representative Marbut moved that the committee adopt the proposed amendments. After some discussion, the motion was seconded and passed unanimously (those shown excused not voting).

Representative Marbut then moved that House Bill 595 DO PASS AS AMENDED. The motion was seconded and passed with Representative Turner voting NO (those shown excused not voting).

Representative Marbut moved that the chairman be authorized to select from the bills held over until 1974, and present to the Committee on Priorities a recommendation for those bills to be considered by the subcommittee during the interim. The motion was seconded and passed unanimously (those shown excused not voting).

There being no further business, the meeting adjourned at 11:15 a.m.


ROBERT E. LEE, Chairman



The Big Sky Country

MONTANA STATE HOUSE OF REPRESENTATIVES

WILLIAM H. ZIMMER

DISTRICT NO. 10
OLNEY, MONTANA 59907

COMMITTEES:

LOCAL GOVERNMENT
PUBLIC HEALTH, WELFARE AND SAFETY

Dear Bob:

Board feels OK if you are assured that the guidelines called for, spelling out the 32 duties of the board are definitely in the law. If not positive suggest a new section stating "the law provides that the board perform the following functions: 1-32. Rita & others would like it specific in the bill.

Thanks,

John

PROPOSED AMENDMENTS TO HOUSE BILL 595

✓ On page 1 insert after the number 69-4216, the number 69-4218.

✓ On page 2, add on line 8 after the word "THE", the following material:

"CODIFICATION AND GENERAL"

Sec 2
✓ On page 5, delete on line 4 the word "sixth" and insert in lieu thereof the word "tenth (10)"

On page 25, delete all the material on lines 5 and 6. On page 25, delete on line 7 the term "(3)" and insert in lieu thereof the term "(2)"; on page 25, delete on line 11 the term "(4)" and insert in lieu thereof the term "(3)"; on page 25, delete on line 13 the term "(5)" and insert in lieu thereof the term "(4)"; on page 25, delete on line 18 the term "(6)" and insert in lieu thereof the term "(5)".

• On page 25, delete on line 23 the term "(1)"

Sec 10 Sub (7)
✓ On page 26, delete all the material on lines 13, 14, 15, 23, 24, and 25

✓ On page 27, delete all the material on lines 1, 2, 3, and 4

Sec 32 (a) Sub (6)
✓ On page 58, add between lines 7 and 8 the following material:

"(17) Have the power to use personnel of local departments of health

✓ to assist in the administration of laws relating to public health."

Sec 36
✓ On page 61, delete all the material on lines 19, 20, and 21

Sec 38
✓ On page 62, delete all the material on lines 17, 18, and 19

On page 63, delete all the material on lines 6 and 7, and on lines 16 through 25

On page 64, delete all the material on lines 1 through 25

On page 65, delete all the material on lines 1 through 4

Re-number sections 39, 40, 41, 42, and 43 accordingly

On page 72, insert between lines 9 and 10 a new section to read as follows:

"Section 43. Section 69-4218, R.C.M. 1947, is amended to read as follows:

69-4218. Hearings and judicial review. (1) No rule or amendment or repeal thereof shall take effect except after public hearing on due notice, and after the advisory committee has been afforded not less than thirty (30) days prior to publication of the proposed text to comment thereon. Such notice shall be given by public advertisement not less than twenty (20) or more than thirty (30) days prior to the date set for such the hearing.

(2) Nothing in this section shall be construed to require requires a hearing prior to the issuance of an emergency order pursuant to section ~~11-69-4218~~ of this act 69-4216.

(3) Any person aggrieved by any order of the board may apply for rehearing upon one (1) or more of the following grounds, and upon no other grounds:

(a) The board acted without or in excess of its powers.

(b) The order was procured by fraud.

(c) The order is contrary to the evidence.

(d) The applicant has discovered new evidence, material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.

(e) Competent evidence was excluded to the prejudice of the applicant. The petition must be in such form and filed in such time as the board shall prescribe.

(4)--(a)--Within thirty (30) days after the application for rehearing is denied, or, if the application is granted, within thirty (30) days after the decision on the rehearing, any party aggrieved thereby may appeal to the district court of any judicial district of the state which is the situs of property affected by the order.

(b)--The appeal shall be taken by serving a written notice of appeal upon the executive officer of the board, which service shall be made by the delivery of a copy of the notice to such officer, and by filing the original with the clerk of the court to which the appeal is taken.--Immediately upon service upon the board, the board shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the board.--Immediately upon receiving the certified record, the district court shall fix a day for filing of briefs and hearing arguments on the cause, and shall cause a notice of the same to be served upon the board and the appellant.

(c)--The court shall hear and decide the cause upon the record of the board.--The court shall determine whether or not the board regularly pursued its authority, whether or not the findings of the board were supported by substantial competent evidence and whether or not the board made error of law prejudicial to the appellant.

(5)--Either the board or the person aggrieved may appeal from the decision of the district court to the supreme court.--The proceedings before the supreme court shall be limited to a review of the record of the hearing before the board and of the district court's review of that record."

✓ On page 123, delete on line 21 the term "1969" and insert in lieu thereof the term "1967".

✓ On page 123, reinstate the deleted material on lines 22 through 25.

✓ On page 124, reinstate the deleted material on lines 1 and 2.

✓ On page 137, delete on line 5 all the material after the word "who" and delete all the material on line 6 and insert in lieu thereof the words "are licensed to practice medicine in this state."

✓ On page 137, delete on line 7 all the material after the word "who" and delete all the material on line 8, and insert in lieu thereof the words: "is licensed to practice dentistry in this state."

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On page 150, add on line 10 after the number "69-4113," the number "69-4210."

On page 150, add on line 14 the following: "Section 119. This act is effective on passage and approval."

SENATE JOURNAL—SPECIAL SESSION
FORTY-THIRD LEGISLATIVE ASSEMBLY

REPORTS OF SELECT COMMITTEES

The following Joint Conference Committee submitted the following report:

MR. PRESIDENT AND SPEAKER OF THE HOUSE:

We, your Joint Senate and House Conference Committee on House Bill No. 15, beg leave to report as follows:

That we met March 19 and considered Senate Committee on Taxation Amendment of March 8, 1973 to House Bill No. 15. This Joint Conference Committee recommends as follows:

That the Senate recede from all of the Senate Committee on Taxation Amendments of March 8, 1973.

That House Bill No. 15 be concurred in without the Senate Committee on Taxation Amendment.

For the Senate: MCGOWAN
TURNAGE
McOMBER

For the House: YARDLEY
SWANBERG
FAGG

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

The following communication from the House was received and read:

March 21, 1973

Mr. President:

I am directed by the House of Representatives to inform your Honorable Body that the following House Bills were this day read three several times and passed, title and history agreed to, and the bills are herewith transmitted to the Senate for concurrence.

House Bill No. 588 introduced by Lund

House Bill No. 595 introduced by Fasbender, Marbut

Respectfully,

ED SMITH
Chief Clerk

INTRODUCTION OF HOUSE BILLS

The following House Bills were introduced, posted and referred:

House Bill No. 588, introduced by Lund: A Bill for an Act Entitled: An act appropriating moneys for the office of coordinator of Indian affairs for the biennium ending June 30, 1975." Referred to Committee on Finance and Claims.

House Bill No. 595, introduced by Fasbender, Marbut: A Bill for an Act Entitled: "An act for the codification and general revision of laws relating to the department of health and environmental sciences, and providing that this act is effective upon its passage and approval." Referred to Committee on Executive Reorganization.

BUSINESS ON SECOND READING

Upon motion of Senator Lynch, duly carried, the Senate resolved

and concurred in, as amended, title and history agreed to, and the bill is herewith returned to the Senate for concurrence in House Amendments.

Respectfully,

ED SMITH

Chief Clerk

Mr. President: We, your Committee on Enrolled Bills, to whom were referred: Senate Bills Nos. 7, 54, 469, 197, 352, 457, 470, beg leave to report the same back correctly enrolled and duly verified.

DeWOLFE, Chairman

Report adopted.

I have examined Senate Bill No. 197 introduced by me and find the same to be correct.

GROFF

I have examined Senate Bill No. 352 introduced by me and find the same to be correct.

McKEON

I have examined Senate Bill No. 457 introduced by me and find the same to be correct.

GROFF

I have examined Senate Bill No. 470 introduced by me and find the same to be correct.

GROFF

I have examined Senate Bill No. 7 introduced by me and find the same to be correct.

GROFF

I have examined Senate Bill No. 54 introduced by me and find the same to be correct.

GROFF

I have examined Senate Bill No. 469 introduced by me and find the same to be correct.

CARL

The President signed the following Senate Bills in open session, the titles having first been read:

Senate Bills Nos. 197, 352, 457, 470, 7, 54.

MOTIONS AND RESOLUTIONS

Upon motion of Senator Lynch, duly carried, that the following Senate and House Bills being held over for the second half of the 43rd Legislative Assembly be referred from their respective committees and be referred to the Committee on Rules and Priorities.

Senate Bill No. 16—Rules and Priorities

Senate Bill No. 87—Executive Reorganization

Senate Bill No. 99—Labor & Employment Relations

Senate Bill No. 151—Local Government

Senate Bill No. 252—Natural Resources

Senate Bill No. 418—Fish & Game

Senate Bill No. 439—Agriculture, Livestock & Irrigation

SENATE JOURNAL—SPECIAL SESSION
FORTY-THIRD LEGISLATIVE ASSEMBLY

Senate Bill No. 453—Executive Reorganization
 Senate Bill No. 461—Executive Reorganization
 Senate Bill No. 413—Select Committee on Gambling
 Senate Joint Resolution No. 10—Rules and Priorities
 House Bill No. 58—Taxation
 House Bill No. 582—Executive Reorganization
 House Bill No. 590—Executive Reorganization
 House Bill No. 595—Executive Reorganization
 House Bill No. 613—Local Government
 House Joint Resolution No. 4—Rules and Priorities
 House Joint Resolution No. 8—Fish and Game

Upon motion of Senator Lynch, duly carried, that House Amendments to Senate Bill No. 413 be taken from Second Reading and referred to the Select Committee on Gambling for Interim Study, and House Bill No. 507 for Interim Study.

Upon motion of Senator Lynch, duly carried, that House Amendments to Senate Bill No. 413 be authorized by the Priorities Committee for Interim Study.

The following resolution was received and read:

SENATE RESOLUTION NO. 45

Introduced by the Committee on Legislative Administration

BE IT RESOLVED BY THE SENATE OF THE FORTY-THIRD EXTRAORDINARY LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

That the officers, employees and attaches of the Senate hereinafter named, are hereby employed and retained in employment of the Senate of the Forty-Third Extraordinary Legislative Assembly of the State of Montana to continue and remain in service after the twelfth (12) day of the Forty-Third Extraordinary Legislative Assembly for the purpose of completing all unfinished business incident to and consequent upon the session, including:

1. Under the direction of the Secretary of the Senate, preparation of a final and permanent bill status, proofreading journal, final integration of journal, arrangement, labeling and marking of all bills, delivery of session records and books to the Secretary of State, and securing proper receipts and acquittances therefor, in accordance with Joint Rule 3, subsection 5 (c) and (d) of the Rules of the Montana Legislative Assembly, and the performance of such other duties as may be necessary and proper under the direction of the Senate.

2. The Sergeant-at-Arms office shall mark all furniture in accordance with Extraordinary Senate Resolution No. 5 and shall take and compile in quadruplicate a complete inventory of all permanent furniture and fixtures belonging to the Senate, and all other fixtures, codes and Session Laws, and shall as respects the same proceed in accordance with Joint Rule 3, subsection 8 (d) of the Rules of the Montana Legislative Assembly.

No. of Days

John Hanson 15

base operator in this state or an official of a base operator in this state, of flying services or flying schools.

(3) The board is *allocated* to the department for administrative purposes only as prescribed in section 82A-108.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112."

Section 105. Section 89-2107, R.C.M. 1947, is amended to read as follows:

"89-2107. **Records — inspection — fees — reports.** *The board of commissioners shall keep a complete book and record of the accounts, records, contracts, securities, minutes of meetings, and other matters of every kind pertaining to or belonging to the irrigation district, in the form prescribed by the department of intergovernmental relations. The department of intergovernmental relations shall prescribe forms for the use of irrigation districts and examine them as provided by law for the examination of the affairs of county officers. The books and records shall be open to the inspection of any landowner of the district the same as other public records. The failure of the board of commissioners to comply with this section is grounds for removal from office, and the county attorney of any county in which the irrigation district is situated shall prosecute ouster proceedings against any commissioner or commissioners. The cost of the proceedings is a charge against the irrigation district, and shall be paid as are other bills against the districts.*

(2) *If a district is appointed fiscal agent of the United States, or by the United States is authorized to make collections for or on behalf of the United States in connection with a federal irrigation project, the board of commissioners or its secretary shall at any time allow any officer or employee of the United States, when acting under the orders of the secretary of the interior, to have access to all books, records, and vouchers of the district which are in possession or control of the secretary or board.*

(3) *The board of commissioners shall annually file with the county clerk and recorder of the county in which the district is located, within ten (10) days after March 1 of each year, a sworn report showing the assets and liabilities of the district, the amount of money received during the preceding year, and the amount spent during that time, and shall publish the report at least once in a newspaper of the county.*

(4) *The department of intergovernmental relations shall notify the secretaries of the districts of the time of presenting the books and records at the courthouse for examination."*

Section 106. Wherever the words "state examiner" appear in section 16-2618, the words "department of intergovernmental relations" are substituted therefor.

The publishers of the Revised Codes of Montana, 1947, are directed under the supervision of the supreme court of Montana, to make the substitutions enumerated in this section when reprinting sections or portions of sections of the Revised Codes in either supplements to or replacement volumes for the Revised Codes.

Section 107. Sections 1-201, 1-202, 1-312, 1-313, 1-317, 1-321, 1-504, 1-805, 1-926, 11-3253, 16-1225, 16-1227, 16-2925, 32-4603, 32-4604, 82-3703, 82-3704, 82-3707, 82-3709, 82A-902, 82A-903, 82A-906, R.C.M. 1947, are repealed.

Approved March 28, 1974

CHAPTER NO. 349

AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF LAWS RELATING TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-612, R.C.M. 1947, is amended to read as follows:

"27-612. **Definition of terms.** *Unless the context requires otherwise, in this act:*

(1) "Food" means *an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.*

(2) "Food manufacturing establishment" means a commercial establishment, and buildings or structures in connection with it, used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

(3) "Meat market" means a commercial establishment, and buildings or structures in connection with it, used to process, store, or display meat or meat products for sale to the public or for human consumption.

(4) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, night club, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge. The term does not include establishments, vendors, or vending machines which sell or serve only packaged nonperishable foods in their unbroken original containers, or a private organization serving food only to its members.

(5) "Frozen food plant" means a place used to freeze, process, or store food including facilities used in conjunction with the frozen food plant and a place where individual compartments are offered to the public on a rental or other basis.

(6) "Person" means a person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment.

(7) "Establishment" means a food manufacturing establishment, meat market, food service establishment, frozen food plant, commercial food processor, or perishable food dealer.

(8) "State board" means the board of health and environmental sciences, provided for in section 82A-605.

(9) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(10) "Perishable food dealer" means a person or commercial establishment which is in the business of purchasing and selling perishable food to the public."

Section 2. Section 27-616, R.C.M. 1947, is amended to read as follows:

"27-616. **Notice of denial or cancellation of license — demand for hearing.** If an application is denied, or a license canceled, the department shall notify the applicant or licensee in writing of the ground for the action. If the applicant or licensee desires a hearing by the board to show cause why the action should not be taken, he shall notify the board before the tenth day after notice of the action has been received."

Section 3. Section 27-702, R.C.M. 1947, is amended to read as follows:

"27-702. **Definition of terms.** Unless the context requires otherwise, in this act:

(a) "State board" or "board" means the board of health and environmental sciences, provided for in section 82A-605.

(b) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(c) "Person" includes an individual, partnership, corporation, and association.

(d) "Food" means:

(1) Articles used for food or drink for man or other animals;

(2) Chewing gum; and

(3) Articles used for components of these articles.

(e) "Drug" means:

(1) Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or a supplement to any of these;

(2) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(3) Articles (other than food) intended to affect the structure or function of the body of man or other animals;

(4) Articles intended for use as a component of any article specified in clause (1), (2) or (3); but does not include devices or their components, parts or accessories.

(f) "Device" (except when used in subsection (1) of this section and in sections 27-703 (j), 27-711 (f), 27-715 (c) and (o) and 27-719 (c)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(1) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(2) To affect the structure or function of the body of man or other animals.

(g) "Cosmetic" means:

(1) Articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(2) Articles intended for use as a component of these articles, except that the term does not include soap.

(h) "Official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or a supplement to any of these.

(i) "Label" means a display of written, printed, or graphic matter on the immediate container of an article; and a requirement made by or under authority of this act that a word, statement, or other information appearing on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper.

(j) "Immediate container" does not include package liners.

(k) "Labeling" means labels and other written, printed, or graphic matter:

(1) On an article or its containers or wrappers;

(2) Accompanying the article.

(l) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading there shall be taken into account not only representations made or suggested by statement, word, design, device, sound, or a combination of these, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement or under conditions of use as are customary or usual.

(m) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(n) The representation of a drug, in its labeling or advertisement, as an antiseptic is considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use *which* involves prolonged contact with the body.

(o) "New drug" means:

(1) A drug the composition of which is such that *it* is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in *its* labeling; or

(2) A drug the composition of which is such that *the* drug, as a result of investigations to determine its safety and effectiveness for use under *the* conditions *prescribed*, has become so recognized, but which has not, otherwise than in *the* investigations, been used to a material extent or for a material time under *the* conditions *prescribed*.

(p) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(q) The provisions of this act regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of *these articles* for sale; the sale, dispensing, and giving of *these articles*; and the supplying or applying of *these* articles in the conduct of a food, drug, or cosmetic establishment.

(r) "Pesticide chemical" means a substance which, alone, in chemical combination, or in formulation with one (1) or more other substances is an "economic poison" under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C., secs. 135-135k), as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(s) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(t) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including a source of radiation intended for *this* use), if *the* substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that *this* term does not include:

(1) A pesticide chemical in or on a raw agricultural commodity;

(2) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(3) A color additive;

(4) A substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the Federal Act; the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*); or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 *et seq.*).

(u) (Color and color additive)

(1) "Color additive" means a material which:

(A) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity from a vegetable, animal, mineral, or other source; or

(B) When added or applied to a food, drug, or cosmetic, or to the human body is capable (alone or through reaction with other substance) of imparting color thereto; except that *this* term does not include material which has been or hereafter is exempted under the Federal Act.

(2) "Color" includes black, white, and intermediate grays.

(3) Subsection (u) does not apply to a pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

(v) "Federal Act" means the Federal Food, Drug and Cosmetic Act, as amended (Title 21 U.S.C. 301 *et seq.*).

(w) "Counterfeit drug" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed *the* drug and which falsely purports or is represented to be the product of, or to have been packed or distributed by *the* other drug manufacturer, processor, packer, or distributor.

(x) "Consumer commodity," except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this act or by the Federal Act and regulations pursuant thereto. *The* term does not include:

(1) Any tobacco or tobacco product;

(2) A commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the Virus-Serum Toxin Act;

(3) A drug subject to section 17 (a) (B) or 16 (k) of this act, or section 503 (b) (1) or 506 of the Federal Act;

(4) A beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

(5) A commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

(y) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(z) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include:

(1) *Shipping* containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors;

(2) *Shipping* containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity."

Section 4. Section 27-721, R.C.M. 1947, is amended to read as follows:

"27-721. **Adopting rules — hearings.** (1) The department may adopt rules for the efficient enforcement of this act. The department may adopt by reference the regulations adopted by the Food and Drug Administration under the Federal Act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

(2) No hearing is required for adoption by reference of those regulations adopted under the Federal Act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.)."

Section 5. Section 27-801, R.C.M. 1947, is amended to read as follows:

"27-801. **Definitions.** Unless the context requires otherwise, in this act (1) "Flour" means the foods commonly known in the milling and baking industries as:

(a) White flour, also known as wheat flour or plain flour;

(b) Bromated flour;

(c) Self-rising flour, also known as self-rising white flour or self-rising wheat flour; and

(d) Phosphated flour, also known as phosphated white flour or phosphated wheat flour, but excluding whole wheat flour and special flours not used for bread, roll, bun, or biscuit baking, such as specialty cake and pancake flours.

(2) "White bread" means any bread made with flour whether baked in a pan or on a hearth or screen, and which is commonly known or usually represented and sold as white bread, including vienna bread, french bread, and italian bread.

(3) "Rolls" includes plain white rolls and buns of the semi-bread dough type, namely: soft rolls, such as hamburger rolls, hot dogs rolls, parker house rolls; and hard rolls, such as vienna rolls, kaiser rolls, yeast-raised sweet rolls, or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and butterfly rolls.

(4) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(5) "Person" means an individual, corporation, partnership, association, joint-stock company, trust, or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread, or rolls."

Section 6. Section 27-804, R.C.M. 1947, is amended to read as follows:

"27-804. **Enforcement — modification of requirements.** (1) The department shall adopt rules and orders for the efficient enforcement of this act.

(2) When the vitamin and mineral requirements in sections 27-802 and 27-803 are no longer in conformity with the legally established standards governing the interstate shipment of enriched flour and enriched white bread or rolls, the department, in order to maintain uniformity between intrastate and interstate vitamin and mineral requirements for the foods under this act, shall modify or revise the requirements to conform with amended standards governing interstate shipments. The interstate standards referred to are those standards established under the Federal Food, Drug, and Cosmetic Act of 1938, as amended. (Title 21 U.S.C. 301 et seq.).

(3) In the event of findings by the department that there is an existing or imminent shortage of an ingredient required by sections 27-802 or 27-803, and that because of this shortage the sale and distribution of flour, or white bread, or rolls may be impeded by the enforcement of this act, the department shall issue an order, to be effective immediately upon issuance, permitting the omission of the ingredient from flour, white bread, or rolls; and if it finds it necessary or appropriate, excepting the foods from labeling requirements until the further order of the department. These findings may be made without hearing, on the basis of an order or of factual information supplied by the appropriate federal agency or officer. In the absence of an order of the appropriate federal agency or factual information supplied by it, the department may, on receiving the sworn statements of ten (10) or more persons subject to this act that they believe a shortage exists or is imminent, shall, within twenty (20) days hold a public hearing at which an interested person may present evidence; and shall make findings based on the evidence presented. The department shall publish notice of the hearing at least ten (10) days before it. When the department has reason to believe that the shortage no longer exists, it shall hold a public hearing, after at least ten (10) days notice has been given, at which an interested person may present evidence, and it shall make findings based on the evidence presented. If it finds that a shortage no longer exists, it shall issue an order effective not less than thirty (30) days after its publication revoking the previous order; however, undisposed flour stocks of flour on hand at the effective date of the revoca-

tion order, or flour manufactured *before the effective date* for sale in this state may thereafter be lawfully sold or disposed of.

(4) *Orders and rules* adopted by the *department* under this act shall be published in the manner prescribed in *subsection (5) of this section*, and, within the limits specified by this act, shall become effective *on the date the department fixes*.

(5) *When* under this act publication of any notice, order, or rule is required, *the publication* shall be made at least once in at least one (1) daily newspaper of general circulation printed and published in this state.

(6) For the purpose of this act, the department may take samples for analysis, conduct examinations and investigations, and enter, at reasonable times, a factory, mill, bakery, warehouse, shop, or establishment where flour, white bread, or rolls are manufactured, processed, packed, sold, or held, or a vehicle being used for the transportation thereof and may inspect the place or vehicle and any flour, white bread, or rolls therein, and all pertinent equipment, materials, containers, and labeling."

Section 7. Section 34-305, R.C.M. 1947, is amended to read as follows:

"34-305. **Cancellation or denial of license — procedure.** (1) The department may cancel a license if it finds, after proper investigation, that the licensee has violated this act or a rule effective under this act, and the licensee has failed or refused to remedy or correct the violation. Submission to the department of an acceptable plan of correction within ten (10) days after receipt from the *department* of written notice of violation, and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the *department* shall be a bar to prosecution for violation.

(2) A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds therefor or the charge involved and an opportunity to answer at a hearing before the board to show cause, if any, why the license should not be denied or canceled. In such case, the licensee must make a written request to the board for a hearing within ten (10) days after notice of the grounds or charges has been received.

(3) When a multiple type establishment is licensed by the department, the denial or cancellation of the license may affect the entire establishment or only a portion of it as determined by the *department* (a multiple type establishment includes two or more of the following: hotel, motel, or tourist home).

(4) On cancellation of a license or the right to operate one or more of the multiple type establishments under same license, the license certificate shall be returned to the *department* for destruction or deletion of types of establishment as the *department* may direct in its notice of cancellation.

(5) When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this act, or a rule effective under this act."

Section 8. Section 69-3401, R.C.M. 1947, is amended to read as follows:

"69-3401. **Definitions.** (1) "Board" means the board of health and environmental sciences, provided for in section 82A-605.

(2) "Sanitarian" means a person who is trained in physical, biological, and sanitary sciences to carry out inspection and educational duties in the field of environmental health.

(3) "Registered sanitarian" means a sanitarian registered under this act.

(4) "Certificate of registration" means a document showing the name of a registered sanitarian, the date of issue, serial number, the signatures of the designated members of the department authorized to grant the certificate, and issued under the seal of the board.

(5) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6."

Section 9. Section 69-3402, R.C.M. 1947, is amended to read as follows:

"69-3402. **Administration of chapter.** The department is responsible for administration of this chapter. The department shall maintain a record of all registration activities and a register disclosing names, dates, and addresses of all applicants for a certificate. The register constitutes prima facie evidence of all matters entered in the register. The department may adopt rules it determines necessary and proper for its function and administration."

Section 10. Section 69-3405, R.C.M. 1947, is amended to read as follows:

"69-3405. **Revocation or suspension.** The department may revoke or suspend the certificate of registration of any registrant for unprofessional conduct or the practice of any fraud or deceit in obtaining registration, or any gross negligence, incompetency or misconduct in the practice as a professional sanitarian, or upon the conviction of any crime involving moral turpitude. No revocation of certificate is effective until after a hearing, duly noticed, by the board."

Section 11. Section 69-3605, R.C.M. 1947, is amended to read as follows:

"69-3605. **Definitions.** Unless the context requires otherwise, in this act: (1) "Ambulance" means a privately or publicly owned motor vehicle that is especially designed, constructed, and equipped, which is maintained and used for the transportation of patients, including dual purpose police patrol cars and funeral coaches or hearses which otherwise comply with this act, but does not include a motor vehicle owned by, or operated under the direct control of the United States or this state of Montana.

(2) "Ambulance service" means a person who operates an ambulance.

(3) "Attendant" means a trained or otherwise qualified individual

responsible for the operation of an ambulance and the care of the patients whether or not the attendant also serves as driver.

(4) "Attendant-driver" means a person who is qualified as an attendant and a driver.

(5) "Driver" means an individual who drives an ambulance.

(6) "Dual purpose police patrol car" means a vehicle, operated by a police department, which is equipped as an ambulance, even though it is also used for patrol or other police purposes.

(7) "Department" means the *department of health and environmental sciences, provided for in Title 82A, chapter 6.*

(8) "Board" means the board of health and environmental sciences, provided for in section 82A-605.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(10) "Person" means *an* individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States or *this state.*"

Section 12. Section 69-3608, R.C.M. 1947, is amended to read as follows:

"69-3608. **Cancellation or denial of licenses — procedure.** (1) The department may cancel a license if it finds that the licensee has violated provisions of or rules adopted under this act, and the licensee has failed or refused to remedy or correct the violation. Submission to the department of an acceptable plan of correction within ten (10) days after receipt from the department of written notice of violation, and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department, is a bar to prosecution for violation.

(2) The department may not deny or cancel a license without:

(a) Delivery to the applicant or licensee of a written statement of the grounds for the denial or cancellation or the charge involved;

(b) An opportunity to answer at a hearing before the board to show cause, if any, why the license should not be denied or cancelled. In this case, the licensee shall make written request to the board for a hearing within ten (10) days after notice of the grounds or charges has been received. If the board finds that the violations of this act do not constitute a danger to the public health and would produce a hardship without equal or greater benefit to the public, the board may grant an exception to the licensee for a period not to exceed one (1) year, during which time a license may not be denied the licensee nor may his license be canceled. Subsequent exceptions may be granted the licensee, each for a period not to exceed one (1) year, and each after a hearing before the board.

(3) On cancellation of a license, the license certificate shall be returned

to the department for destruction or deletion as the department may direct in its notice of cancellation.

(4) When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this act, or the rules adopted under this act."

Section 13. Section 69-3610, R.C.M. 1947, is amended to read as follows:

"69-3610. **Inspections.** (1) The department shall make necessary investigations and inspections for enforcement of this act. The department shall make regular inspections as the rules of the department may direct, and special inspections which the department may consider necessary.

(2) The department has free access at all reasonable hours to the establishments listed and defined in section 69-3605, to make inspections."

Section 14. Section 69-3906, R.C.M. 1947, is amended to read as follows:

"69-3906. **Definitions.** Unless the context requires otherwise, in this act: (1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(2) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in a quantity and for a duration which is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(3) "Emission" means a release into the outdoor atmosphere of air contaminants.

(4) "Person" means *an* individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity.

(5) "Advisory council" means the air pollution control advisory council provided for in section 82A-606.

(6) "Board" means the board of health and environmental sciences, provided for in section 82A-605.

(7) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6."

Section 15. Section 69-3907, R.C.M. 1947, is amended to read as follows:

"69-3907. **Administration.** The department is responsible for the administration of this act."

Section 16. Section 69-3908, R.C.M. 1947, is amended to read as follows:

"69-3908. **Air pollution control advisory council — meetings — minutes — duties.** (1) A chairman shall be elected by the advisory council from among its number.

(2) The advisory council shall hold at least two (2) regular meetings each calendar year and shall keep a summary record of its proceedings which shall be open to the public for inspection. Special meetings may be called by the chairman and must be called by him *on* receipt of a written request signed by two (2) or more members of the advisory council. Notice of the time and place for meetings shall be given in advance to each member of the advisory council by the secretary.

(3) The secretary of the advisory council shall be a member of the staff of the *department*, designated by the *director of health and environmental sciences*. The secretary shall keep all records of meetings of, and actions taken by, the council. He shall keep the advisory council advised as to actions taken by persons in response to recommendations and orders issued under this act and shall perform other duties as determined by the advisory council, not inconsistent with rules and policies adopted *under* this act or specific authority otherwise given the advisory council.

(4) The advisory council *shall act in an advisory capacity to the department on matters relating to air pollution.*"

Section 17. Section 69-3909, R.C.M. 1947, is amended to read as follows:

"69-3909. **Powers of board.** The board shall:

(1) Adopt, amend, and repeal rules implementing and consistent with this act.

(2) Hold hearings relating to any aspect of or matter in the administration of this act, at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) Issue orders necessary to effectuate the purposes of this act.

(4) *By rule require* access to records relating to emissions.

(5) Establish ambient air quality standards for the state."

Section 18. There is a new section to be numbered 69-3909.1, R.C.M. 1947, which reads as follows:

69-3909.1. **Powers of department.** The department shall:

(1) Enforce orders issued by the board by appropriate administrative and judicial proceedings;

(2) Secure necessary scientific, technical, administrative, and operational service, including laboratory facilities, by contract or otherwise;

(3) Prepare and develop a comprehensive plan for the prevention, abatement, and control of air pollution in this state;

(4) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of this act;

(5) Encourage local units of government to handle air pollution problems within their respective jurisdictions on a cooperative basis, and provide technical and consultative assistance for this. If local programs are financed with public funds, the department may contract with the local government to share the cost of the program. However, the state share may not exceed thirty percent (30%) of the total cost.

(6) Encourage and conduct studies, investigations, and research relating to air contamination and air pollution and their causes, effects, prevention, abatement, and control;

(7) Determine by means of field studies and sampling the degree of air contamination and air pollution in the state;

(8) Make a continuing study of the effects of the emission of air contaminants from motor vehicles on the quality of the outdoor atmosphere of this state, and make recommendations to appropriate public and private bodies with respect to this.

(9) Collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution;

(10) Advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups;

(11) Consult, on request, with any person proposing to construct, install or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of this device or system, or the air pollution problems which may be related to the source, device, or system. Nothing in this consultation relieves a person from compliance with this act, rules in force under it, or any other provision of law.

(12) Accept, receive, and administer grants or other funds or gifts from public or private agencies including the United States, for the purpose of carrying out this act. Funds received under this section shall be deposited in the state treasury to the account of the department.

Section 19. Section 69-3912, R.C.M. 1947, is amended to read as follows:

"69-3912. **Inspections.** (1) *The department* may enter and inspect, at any reasonable time, any property, premises, or place, except a private residence, on or at which an air contaminant source is located or is being constructed or installed for the purpose of ascertaining the state of compliance with this act and rules in force *under it*.

(2) A person *may not* refuse entry or access to an authorized representative of the *department when it* requests entry for purposes of inspection, and who presents appropriate credentials. A person *may not* obstruct, hamper, or interfere with an inspection.

(3) At his request, the owner or operator of the premises shall receive a report setting forth all facts found which relate to compliance status."

Section 20. Section 69-3914, R.C.M. 1947, is amended to read as follows:

"69-3914. **Enforcement.** (1) *When the department has reason to believe that a violation of this act or a rule made under it has occurred, it may cause written notice to be served on the alleged violator. The notice shall specify the provision of this act or rule alleged to be violated, and the facts alleged to constitute a violation, and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, no later than thirty (30) days after the date the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall hold a hearing.*

(2) *If, after a hearing held under subsection (1) of this section, the board finds that violations have occurred, it shall either affirm or modify an order previously issued, or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. If, after hearing on an order contained in a notice the board finds that no violation is occurring, it shall rescind the order. An order issued as part of a notice or after hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the emissions.*

(3) *Instead of issuing the order provided for in subsection (1) of this section, the department may either:*

(a) *Require that the alleged violators appear before the board for a hearing at a time and place specified in the notice, and answer the charges complained of; or*

(b) *Initiate action under section 69-3921.*

(4) *This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.*

(5) *In connection with a hearing held under this section, the board may, and on application by a party shall, compel the attendance of witnesses and the production of evidence on behalf of the parties."*

Section 21. Section 69-3915, R.C.M. 1947, is amended to read as follows:

"69-3915. **Emergency procedure.** (1) *Any other law to the contrary notwithstanding, if the department finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the department shall order persons causing or contributing to the air pollution to reduce or discontinue immediately the emission of air contaminants. Upon issuance of this order, the department shall fix a place and time, not later than twenty-four (24) hours thereafter, for a hearing to be held before the board. Not more than twenty-four (24) hours after the commencement of the hearing, and without adjournment, the board shall affirm, modify, or set aside the order of the department.*

(2) *In the absence of a generalized condition such as that referred to in subsection (1) of this section, if the department finds that emissions*

from the operation of one (1) or more air contaminant sources is causing imminent danger to human health or safety, it may order the person or persons responsible for the operation or operations in question to reduce or discontinue emissions immediately, without regard for section 69-3914. In this event, the requirements for hearing, and affirmance, modification, or setting aside of orders set forth in subsection (1) of this section apply.

(3) *This section does not limit any power which the governor or any other officer may have to declare an emergency and act on the basis of this declaration, whether the power is conferred by statute, constitutional provisions, or inheres in the office."*

Section 22. Section 69-3918, R.C.M. 1947, is amended to read as follows:

"69-3918. **Confidentiality of records.** (1) *Records or other information concerning air contaminant sources which are furnished to or obtained by the board or department, and which, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely his competitive position, are only for the confidential use of the board or department in the administration of this act, unless the owner expressly agrees to their publication or availability to the general public.*

(2) *This section does not prevent the use of records or information by the board or department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere, if the analyses or summaries do not identify an owner or operator or reveal information made otherwise confidential by this section."*

Section 23. Section 69-3919, R.C.M. 1947, is amended to read as follows:

"69-3919. **Local air pollution control programs.** (1) *A municipality or county may establish a local air pollution control program on being petitioned by fifteen per cent (15%) of the qualified electors in its jurisdiction, and may thereafter administer in its jurisdiction the air pollution control program which:*

(a) *Provides by ordinance or local law for requirements compatible with, more stringent, or more extensive than those imposed by sections 69-3913, 69-3915 and 69-3916 and rules issued under these sections;*

(b) *Provides for the enforcement of these requirements by appropriate administrative and judicial process;*

(c) *Provides for administrative organization, staff, financial, and other resources necessary to effectively and efficiently carry out its program; and*

(d) *If the program is consistent with this act and is approved by the board after a public hearing conducted under section 69-3909.*

(2) *If the board finds that the location, character, or extent of particular concentrations of population, air contaminant sources, or geographic, topographic, or meteorological considerations, or any combination of these*

are such as to make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which *the* program is necessary and require it as the only acceptable alternative to direct state administration.

(3) If the board has reason to believe that an air pollution control program in force *under* this section is inadequate to prevent and control air pollution in the jurisdiction to which *the* program relates, or that the program is being administered in a manner inconsistent with this act, the board shall, on notice, conduct a hearing on the matter.

(4) If, after the hearing, the board determines that the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates, or that it is not accomplishing the purposes of this act, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed sixty (60) days.

(5) If the jurisdiction fails to take *these* measures within the time required, the *department* shall administer within such jurisdiction all of the provisions of this act. The *department's* control program *supersedes* all municipal or county air pollution laws, *rules*, ordinances, and requirements in the affected jurisdiction. The cost of *the* program shall be a charge on the municipality or county.

(6) If the board finds that the control of a particular class of air contaminant source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may *direct the department* to assume and retain control over that class of air contaminant source. No charge *may* be assessed against the jurisdiction therefor. Findings made *under* this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(7) A jurisdiction in which the *department* administers its air pollution control program *under* subsection (5) of this section may with the approval of the board establish or resume an air pollution control program which meets the requirements of subsection (1) of this section.

(8) A municipality or county may administer all or part of its air pollution control program in *cooperation* with one (1) or more municipalities or counties of this state or of other states."

Section 24. Section 69-3921, R.C.M. 1947, is amended to read as follows:

"69-3921. **Penalties.** (1) A person who violates this act, or a rule or order made *under it*, other than section 69-3918, is guilty of an offense and subject to a fine not to exceed one thousand dollars (\$1000). Each day of violation *constitutes* a separate offense.

(2) A person who willfully violates section 69-3918 is guilty of an offense and subject to a fine not to exceed one thousand dollars (\$1000).

(3) Action *under* subsections (1) or (2) of this section *are* not a bar to enforcement of this act, or of rules or orders made *under it*, by injunc-

tion or other appropriate remedy. The *department* may institute and maintain in the name of the state any enforcement proceedings.

(4) *This act does not* abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damage or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(5) *Fines* collected shall be deposited to the state general fund."

Section 25. Section 69-3923, R.C.M. 1947, is amended to read as follows:

"69-3923. **Classification of property for taxation.** (1) Facilities, machinery, or equipment, attached or unattached to real property, utilized to reduce, eliminate, control, or prevent air pollution, shall be classified as Class Seven (7) for the purpose of taxation under section 84-301.

(2) The decision, whether the facilities, machinery, or equipment are utilized to reduce, eliminate, control, or prevent air pollution, shall be made by the *department* and approved by the state board of equalization."

Section 26. Section 69-4002, R.C.M. 1947, is amended to read as follows:

"69-4002. **Definitions.** *Unless the context requires otherwise*, in this chapter: (1) "Garbage" *means* putrescible animal and vegetable wastes resulting from handling, preparation, cooking, and consumption of food.

(2) "Refuse" *means* putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

(3) "Rubbish" *means* nonputrescible solid wastes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, abandoned automobiles, tin cans, wood, glass, bedding, crockery, and similar materials.

(4) "*Department*" *means the department of health and environmental sciences, provided for in Title 82A, chapter 6.*

(5) "*Board*" *means the board of health and environmental sciences, provided for in section 82A-605."*

Section 27. Section 69-4010, R.C.M. 1947, is amended to read as follows:

"69-4010. **Section preserved.** *Section 94-3542 is not affected by this act."*

Section 28. Section 69-4102, R.C.M. 1947, is amended to read as follows:

"69-4102. **Definitions.** *Unless the context indicates otherwise*, in sections 69-4101 through 69-5816;

(1) "State board" or "board" *means the board of health and environmental sciences, provided for in section 82A-605;*

(2) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6;

(3) "Communicable disease" means a disease designated communicable by the board."

Section 29. Section 69-4104, R.C.M. 1947, is amended to read as follows:

"69-4104. **Board — officers — meetings — quorum — compensation.** (1) The board may adopt bylaws governing meetings. The *director of health and environmental sciences* shall serve as secretary to the board.

(2) The board shall meet once every two (2) months and may hold additional meetings on the call of the chair, at the request of the *director of health and environmental sciences*, or at the request of a majority of the members. If a member has three (3) unexcused absences from meetings in a calendar year, his position is vacant and the governor shall appoint a person to replace him.

(3) In suits or proceedings in which board actions are the subject of inquiry, meetings shall be *considered* to have been called and held unless the contrary is proven."

Section 30. Section 69-4106, R.C.M. 1947, is amended to read as follows:

"69-4106. **Functions, powers and duties of board.** The board shall:

(1) *Advise the department* in public health matters;

(2) *Hold* hearings, administer oaths, subpoena witnesses, and take testimony in matters relating to the duties of the board."

Section 31. Section 69-4110, R.C.M. 1947, is amended to read as follows:

"69-4110. **Functions, powers, and duties of department.** *The department shall:*

(1) *Study* conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) *Make* investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) *At* the request of the governor, administer any federal health program for which responsibilities are delegated to states;

(4) *Inspect* and work in conjunction with custodial institutions and Montana university system units periodically as necessary, and at other times on request of the governor;

(5) *After* each inspection made under subsection (4) of this section, submit a written report on sanitary conditions to the governor and to the director of institutions or executive secretary of the Montana university system and include recommendations for improvement in conditions, if necessary;

(6) *Advise* state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) *Organize* laboratory services and provide equipment and personnel for those services;

(8) *Develop* and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(9) *Develop* and administer a program to protect the health of mothers and children;

(10) *Conduct* health education programs;

(11) *Supervise* school and local public health nurses in the performance of their duties;

(12) *Consult* with the superintendent of public instruction on health measures for schools;

(13) *Develop* and administer a program for services to handicapped children including diagnosis, medical, surgical and corrective treatment, and after-care and related services;

(14) *Supervise* local boards of health;

(15) *Bring actions in court for the enforcement of the health laws and defend actions brought against the board or department; and*

(16) *Accept and expend federal funds available for public health services.*

(17) *Have the power to use personnel of local departments of health to assist in the administration of laws relating to public health."*

Section 32. Section 69-4111, R.C.M. 1947, is amended to read as follows:

"69-4111. **Legal adviser to state board and department.** The attorney general is legal adviser to the board and department. If the county attorney fails to act, with the approval of the attorney general the *department* may retain special counsel and compensate him from appropriations to the *department*. Either the county attorney of a county where a cause of action arises or the *department* may bring an action necessary to abate, restrain, or prosecute the violation of public health laws."

Section 33. Section 69-4112, R.C.M. 1947, is amended to read as follows:

"69-4112. **Quarantine measures — adoption and enforcement.** *The department may adopt and enforce quarantine measures against a state, county, or municipality to prevent the spread of communicable disease. A person who does not comply with quarantine measures shall, on conviction, be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100). Receipts from fines shall be deposited in the state general fund."*

Section 34. Section 69-4117, R.C.M. 1947, is amended to read as follows:

"69-4117. **Schoolhouses — rules for lighting, heating, ventilation, and sanitary arrangements.** (1) The *department* shall adopt rules for lighting, heating, ventilation, plumbing, and sanitary arrangements for schoolhouses. Before a schoolhouse is constructed, plans must be submitted to the department for approval. A schoolhouse must conform to the rules adopted by the *department* before being used.

(2) Rules relating to building and equipment standards covered by the state or a municipal building code are effective after approval by the *department of administration* and filing with the secretary of state."

Section 35. Section 69-4208, R.C.M. 1947, is amended to read as follows:

"69-4208. **Definitions.** *Unless the context requires otherwise*, in this act:

(1) "Air contaminant" means fumes, dust, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(2) "Emission" means a release into the workspace atmosphere of air contaminants or pollutants.

(3) "Occupational disease" means an illness, impairment, or disability that:

(a) Arises from the person's employment.

(b) Is caused by exposure to a substance or industrial practice which is hazardous to health.

(c) Has symptoms of an industrial disease which is known to have resulted from the same type of exposure in other cases.

(d) Is not the result of a person's contact or activities outside his employment.

(4) "Worker" is a person gainfully employed at any place.

(5) "Work place" is a place or location where a person is gainfully employed.

(6) "Occupational health" is a field of specialization concerned with the problems of health maintenance, productivity, and well-being of industrial workers which are related to and affected by the conditions of work and by the stress of the industrial environment.

(7) "Threshold limit values" means airborne concentrations of substances which it is believed that nearly all workers may be repeatedly exposed to day after day without adverse effect.

(8) "Pollutant" means air contaminants, heat, noise, vibration, ionizing radiation, and nonionizing radiation.

(9) "Sanitary facilities" means toilets, showers, dressing rooms, lunch rooms, sewage disposal systems, and potable water systems.

(10) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(11) "Board" means the board of health and environmental sciences, provided for in section 82A-605.

(12) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate or any other legal entity."

Section 36. Section 69-4209, R.C.M. 1947, is amended to read as follows:

"69-4209. **Administration.** Except as otherwise provided, the department is responsible for administration of this act."

Section 37. Section 69-4211, R.C.M. 1947, is amended to read as follows:

"69-4211. **Powers of board.** The board shall:

(1) Adopt, amend, and repeal rules implementing and consistent with this act.

(2) Hold hearings relating to any aspect of or matter in the administration of this act, at any place designated by the board. The board may designate the director of health and environmental sciences as the hearing officer at any hearing set by the board and authorize him to make rulings on evidence and conduct the hearing. The board or the director of health and environmental sciences as hearing officer may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost.

(3) Issue orders necessary to carry out this act.

(4) Require access to records relating to emissions.

(5) Establish threshold limit values of airborne contaminants for the state as a whole."

Section 38. There is a new section to be numbered 69-4211.1, R.C.M. 1947, which reads as follows:

69-4211.1. **Powers of department.** The department shall:

(1) Enforce board orders by appropriate administrative and judicial proceedings.

(2) Secure necessary scientific, technical, administrative, and operational service, including laboratory facilities, by contract or otherwise.

(3) Prepare and develop a comprehensive plan for the prevention, abatement, and control of occupational disease.

(4) Encourage voluntary cooperation by persons and affected groups to achieve the purpose of this act.

(5) Encourage and conduct studies, investigations, and research relating to occupational diseases and their causes, effects, prevention, abatement, and control.

(6) Determine by means of field studies and sampling the degree of health hazard at any work place in the state.

(7) Collect and disseminate information and conduct educational and training programs relating to the prevention and control of occupational diseases.

(8) Advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and interested persons or groups.

(9) Accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States for the purpose of carrying out this act. Funds received by the department under this section shall be deposited in the state treasury to the account of the department.

Section 39. Section 69-4213, R.C.M. 1947, is amended to read as follows:

"69-4213. **Inspection.** (1) *The department may enter and inspect, at a reasonable time, property, premises, or a place, except a private residence, where a person is or will be employed to ascertain the state of compliance with this act and rules adopted under it.*

(2) *A person may not refuse entry or access to the department when it requests entry for purposes of inspection. A person may not obstruct, hamper, or interfere with an inspection.*

(3) *At his request, the owner or operator of the premises shall receive a report setting forth facts found which relate to compliance status."*

Section 40. Section 69-4215, R.C.M. 1947, is amended to read as follows:

"69-4215. **Enforcement.** (1) *When the department has reason to believe that a violation of this act or rule made under this act has occurred, it may have written notice served on the alleged violator, and the facts alleged to constitute a violation, and may include an order to take necessary corrective action within a reasonable period of time stated in the order. An order becomes final unless, no later than thirty (30) days after the date of notice is received, the person named requests in writing a hearing before the board. On receipt of a request, the board shall hold a hearing.*

(2) *If, after a hearing held under subsection (1) of this section, the board finds that a violation has occurred, it shall either affirm or modify an order previously issued, or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. If, after hearing on an order contained in a notice, the board finds that no violation is occurring, it shall rescind the order. An order issued as part of a notice or after*

hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the pollutant.

(3) *Instead of issuing the order provided for in subsection (1) of this section, the board may either:*

(a) *Require that the alleged violator appear before it for a hearing at a time and place specified in a notice, and answer the charges complained of; or*

(b) *Initiate action under section 69-4221.*

(4) *This act does not prevent the board from making efforts to obtain voluntary compliance through warning, conference, or other appropriate means.*

(5) *In connection with a hearing held under this section, the board may, and on application by a party shall, compel the attendance of witnesses and the production of evidence on behalf of parties."*

Section 41. Section 69-4216, R.C.M. 1947, is amended to read as follows:

"69-4216. **Emergency procedure.** (1) *Any other law to the contrary notwithstanding, if the department finds that a generalized hazard at a work place exists and that it creates an emergency requiring immediate action to protect human health, the department shall order persons causing or contributing to the hazard to reduce or discontinue immediately the emissions creating the hazard. Upon issuance of this order, the department shall fix a place and time, not later than seventy-two (72) hours thereafter, for a hearing to be held before the board. Not more than twenty-four (24) hours after the commencement of the hearing, and without adjournment, the board shall affirm, modify, or set aside the order of the department.*

(2) *In the absence of a generalized condition as that referred to in subsection (1) of this section, if the department finds that emissions from an operation are causing imminent danger to human health, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately, without regard to section 69-4215. In this event, the requirements for hearing and affirmance, modification, or setting aside of orders provided in section 69-4215 apply.*

(3) *This section does not limit any power which the governor or any other officer may have to declare an emergency and act on the basis of the declaration, whether the power is conferred by statute, constitutional provisions, or inheres in the office."*

Section 42. Section 69-4218, R.C.M. 1947, is amended to read as follows:

"69-4218. **Hearings and judicial review.** (1) *No rule or amendment or repeal thereof shall take effect except after public hearing on due notice. Such notice shall be given by public advertisement not less than twenty (20) or more than thirty (30) days prior to the date set for the hearing.*

(2) Nothing in this section *requires* a hearing prior to the issuance of an emergency order pursuant to section 69-4216.

(3) Any person aggrieved by any order of the board may apply for rehearing upon one (1) or more of the following grounds, and upon no other grounds:

- (a) The board acted without or in excess of its powers.
- (b) The order was procured by fraud.
- (c) The order is contrary to the evidence.

(d) The applicant has discovered new evidence, material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.

(e) Competent evidence was excluded to the prejudice of the applicant. The petition must be in such form and filed in such time as the board shall prescribe."

Section 43. Section 69-4219, R.C.M. 1947, is amended to read as follows:

"69-4219. **Confidentiality of records.** (1) *Records* or other information concerning pollutants or operations which are furnished to or obtained by the board or *department*, and which, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely his competitive position, *are* only for the confidential use of the board or *department* in the administration of this act, unless the owner expressly *agrees* to their publication or availability to the general public.

(2) *This section does not* prevent the use of records or information by the board or *department* in compiling or publishing analyses or summaries relating to the general condition at the work place, *if the* analyses or summaries do not identify *an* owner or operator or reveal information made otherwise confidential by this section."

Section 44. Section 69-4221, R.C.M. 1947, is amended to read as follows:

"69-4221. **Penalties.** (1) A person who violates this act relating to limitations of levels, concentrations, or quantities of emissions of various pollutants from a source determined to be necessary to prevent, abate, or control occupational diseases (unless in compliance with this act) is guilty of an offense and subject to a fine not to exceed one thousand dollars (\$1,000). Each day of violation *constitutes* a separate offense.

(2) Proceedings under this section *are* not a bar to enforcement of this act, or of rules or orders made *under it* by injunction or other appropriate remedy. The *department* may institute and maintain in the name of the state *these* enforcement proceedings.

(3) *This act does not* abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damage or other relief on account of injury to persons or property and to maintain *an action* or other appropriate proceeding.

(4) *Fines* collected shall be deposited to the state general fund."

Section 45. Section 69-4304, R.C.M. 1947, is amended to read as follows:

"69-4304. **Functions, powers, and duties of department.** (1) *The department shall;*

(a) *Accept*, spend, and distribute federal funds available for tuberculosis control;

(b) *Collect* and study data on the incidence of tuberculosis.

(2) *The department may, if appropriate, contract with federal agencies or other state agencies for receipt and expenditure of federal funds."*

Section 46. Section 69-4316, R.C.M. 1947, is amended to read as follows:

"69-4316. **Transportation expenses — payment by county.** Expenses of transporting a person to a hospital for commitment shall be paid from the general fund of the county from which the person is committed. The charge for care, treatment, and maintenance at *Galen* state hospital shall be at the rate fixed by law."

Section 47. Section 69-4317, R.C.M. 1947, is amended to read as follows:

"69-4317. **Facilities for diagnosis and treatment of tuberculosis.** *Galen* state hospital shall maintain facilities to carry out this chapter."

Section 48. Section 69-4401, R.C.M. 1947, is amended to read as follows:

"69-4401. **Definitions.** Unless the context *requires* otherwise, in this chapter:

(1) "Vital statistics" includes the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, marital status, and incidental supporting data.

(2) "Live birth" means the birth of a child who shows evidence of life after being entirely outside the mother.

(3) "Fetal death" means a birth after twenty (20) weeks of gestation which is not a live birth.

(4) "Dead body" means a lifeless human body or parts of a body from which it reasonably may be concluded that death occurred recently.

(5) "Person in charge of interment" means a person who places or causes to be placed, a dead body or the ashes after cremation, in a grave, vault, urn, or other receptacle, or otherwise disposes of the body.

(6) "Physician" means a person legally authorized to practice medicine in this state.

(7) "Local registrar" means a person appointed by the *department of health and environmental sciences* to act as its agent in administering this chapter in the area set forth in the letter of appointment."

Section 49. Section 69-4404, R.C.M. 1947, is amended to read as follows:

"69-4404. **Disclosure of data in vital statistics records — inspection of records.** It is unlawful to disclose data in the vital statistics records of the department, local registrars, or county clerk and recorder unless disclosure is authorized by law and approved by the *department*. The *department* may not permit inspection of the records or issue copies of a certificate unless it is satisfied that the applicant has a direct and tangible interest in the data recorded and that the information is necessary for the determination of personal or property rights."

Section 50. Section 69-4405, R.C.M. 1947, is amended to read as follows:

"69-4405. **Disclosure of information to governmental agencies.** The board may direct the *department* to disclose information from its records to federal, state, county, or municipal agencies for use only as prescribed by the board. If no identification of individuals is made, the board may permit the use of data contained in vital statistics records for research purposes."

Section 51. Section 69-4409, R.C.M. 1947, is amended to read as follows:

"69-4409. **Local registrars — appointment — supervision.** The *department* shall:

- (1) *Appoint* local registrars;
- (2) *Supervise* local registrars and other persons required to comply with this act."

Section 52. Section 69-4420, R.C.M. 1947, is amended to read as follows:

"69-4420. **Substitute birth certificate — procedure for issuance.** The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is:

- (1) *Before* the sixteenth day of the month following the order of adoption the clerk of the district court shall forward a certified copy of the final order of adoption to the *department*;
- (2) *The department* shall prepare a substitute certificate containing:
 - (a) *The new name* of the adopted person;
 - (b) *The true date and place of birth and sex* of the adopted person;
 - (c) *Statistical facts* concerning the adoptive parents in place of the natural parents;
 - (d) *The words "department of health and environmental sciences"* substituted for the words "attendant's own signature;" and
 - (e) *Dates of recording* as shown on the original birth certificate."

Section 53. Section 69-4421, R.C.M. 1947, is amended to read as follows:

"69-4421. **Substitute birth certificate — procedure for recording.** (1) The procedure for recording a substitute certificate of birth for a person born in Montana and adopted is:

(a) *The department* shall send copies of the substitute certificate to the local registrar and to the county clerk and recorder;

(b) *The local registrar and county clerk and recorder* shall immediately enter the substitute birth certificate in *its* files and forward copies of the original birth record to the *department*;

(c) *The department* shall seal original birth records and open them only on demand of the adopted person if of legal age, or on order of a court.

(2) On receipt of a certified copy of a court order annulling an adoption, the *department* shall restore the original certificate to its place in its files and notify the local registrar and county clerk and recorder."

Section 54. Section 69-4502, R.C.M. 1947, is amended to read as follows:

"69-4502. **General supervision by department of health and environmental sciences.** The department of health and environmental sciences has general supervision over local boards."

Section 55. Section 69-4503, R.C.M. 1947, is amended to read as follows:

"69-4503. **Federal funds — acceptance — allocation.** The department may accept funds for public health from an agency of the federal government, or from any other agency or person, and allocate funds to local boards."

Section 56. Section 69-4510, R.C.M. 1947, is amended to read as follows:

"69-4510. **Local health officers — powers and duties.** (1) Local health officers, or their authorized representatives, shall:

- (a) *Make* inspections for sanitary conditions;
- (b) *As directed by the local board*, issue written orders for the destruction and removal of filth which might cause disease;
- (c) *With written approval of the department*, order buildings or facilities where people congregate closed during epidemics;
- (d) *On forms provided by the department*, report communicable diseases to the *department* each week;
- (e) *Before* the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of his activities on forms and containing information required by the department;

(f) *Before* the tenth day after the report is given to the local board, send a copy of the report required by subsection (1) (e) of this section to the department;

(g) As prescribed by rules adopted by the *department*, establish and maintain quarantines;

(h) As prescribed by rules adopted by the *department*, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;

(i) *Notify* the department of his appointment and changes in membership of the local board;

(j) *File* a complaint with the appropriate court if this chapter or rules adopted by the local *board* or state *department* under this chapter are violated.

(2) With approval of the *department*, local health officers may forbid persons to assemble in a place if the assembly endangers public health.

(3) A local health officer, who is a physician, may be placed in charge of a communicable disease hospital, but a local health officer, who is a physician, is not required to act as a physician to the indigent. A local health officer, who is not a physician, shall not act as a physician to anyone."

Section 57. Section 69-4602, R.C.M. 1947, is amended to read as follows:

"69-4602. **Education campaigns by department of health and environmental sciences — cooperation with federal agencies — use of federal funds.** The department of health and *environmental sciences* shall undertake to prevent, control, and prescribe treatments for venereal diseases and may conduct education campaigns for this purpose. The department shall *cooperate* with federal agencies and may expend federal funds made available to the state for the prevention, control, and treatment of venereal diseases."

Section 58. Section 69-4603, R.C.M. 1947, is amended to read as follows:

"69-4603. **Acceptance and disbursement of federal funds for control of venereal disease.** The department may accept federal funds available for the prevention, control, and treatment of venereal diseases, deposit funds in the state treasury, and disburse the funds."

Section 59. Section 69-4802, R.C.M. 1947, is amended to read as follows:

"69-4802. **Definitions.** *Unless the context requires otherwise* in this chapter:

(1) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings including discharge from human beings or animals together with ground water infiltration and surface water present.

(2) "Industrial waste" means any waste substance from the process of business or industry, or from the development of any natural resource together with any sewage that may be present;

(3) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, tar, chemicals, dead animals, sediment, and all other substances that may pollute state waters;

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health;

(5) "Pollution" means contamination, or other alteration of the physical, chemical, or biological properties of any state waters, *which* exceeds that permitted by Montana water quality standards, including, but not limited to, standards relating to change in temperature, taste, color, turbidity, or odor, or discharge of any liquid, gaseous, solid, radioactive, or other substance into any state water *which* will or is likely to create a nuisance or render *the* waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge which is permitted by Montana water quality standards is not "pollution" *under* this chapter.

(6) "Sewerage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point;

(7) "Treatment works" means works installed for treating or holding sewage, industrial wastes, or other wastes;

(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes, and includes sewerage systems and treatment work;

(9) "State waters" means any body of water, irrigation system, or drainage system either surface or underground; *however*, this *subsection* does not apply to irrigation waters where the waters are used up within the irrigation system and *the* waters are not returned to any other state waters;

(10) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity;

(11) "Council" means the state water pollution *control* advisory council provided for in section 82A-607;

(12) "Board" means the board of health and *environmental sciences*, provided for in section 82A-605;

(13) "Department" means the department of health and *environmental sciences*, provided for in Title 82A, chapter 6;

(14) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health;

(15) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged;

(16) "Owner or operator" means any person who owns, leases, operates, controls or supervises a point source;

(17) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants;

(18) "Effluent standard" means any restriction or prohibition on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged into state waters."

Section 60. Section 69-4805, R.C.M. 1947, is amended to read as follows:

"69-4805. **Administration of chapter.** (1) Except as otherwise provided, the department is responsible for administration of this chapter.

(2) The department may use *its* personnel and those of the local departments of health as necessary to administer this act."

Section 61. Section 69-4808.1, R.C.M. 1947, is amended to read as follows:

"69-4808.1. **Board to control state matching funds for construction of water pollution control facilities—limit on funds.** (1) The board shall control funds appropriated by the state for the purpose of providing matching funds to local governments for the construction of water pollution control facilities. The board shall *adopt* rules and establish standards for the use of such matching funds, by local governments, in the planning and construction of local water pollution control facilities.

(2) *Funds* appropriated under this act shall be used only to provide an increase in the aid from the federal government not otherwise obtainable and *may not* exceed twenty-five per cent (25%) of the total cost of the project as participated in by the federal water pollution control administration."

Section 62. Section 69-4808.2, R.C.M. 1947, is amended to read as follows:

"69-4808.2. **Duties of board.** (1) The board shall:

(a) *Establish* and modify the classification of all waters in accordance with their present and future most beneficial uses.

(b) *Formulate* standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention.

(c) *Review* from time to time, at intervals of not more than three (3) years, established classifications of waters and standards of water purity and classification, and:

(i) *The* classifications, standards, and rules *which* have been adopted by the state water pollution control council under section 69-4813 *are*, without necessity of a hearing, initially adopted by the board.

(ii) *In* revising classifications or standards or in adopting new classifi-

cations or standards the board may not so formulate standards of water purity or classify any state water as to lower any water quality standard applicable to any state water below the level applicable under the classifications and standards adopted by the state water pollution control council under section 69-4813.

(iii) *The* board shall require that any state waters whose existing quality is better than the established standards as of the date on which *the* standards become effective be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of *these* waters; and

(iv) *The* board shall require any industrial, public, or private project or development, which would constitute a new source of pollution or an increase source of pollution, to high quality waters, referred to in *subsection (1)(c)(iii)*, to provide the degree of waste treatment necessary to maintain that existing high water quality.

(d) *Advise*, consult, and co-operate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution.

(e) *Adopt* rules governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems.

(f) *Adopt* rules governing the issuance, denial, modification, or revocation of permits, and:

(i) *The* rules shall allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that;

(ii) *The* rules may allow the issuance of a temporary permit under which pollution may result, for a period no longer than three (3) years and subject to no extension, if the department finds that the issuance of a permit is proper for obtaining compliance with the applicable standards;

(iii) *The* rules shall provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible; and

(iv) A person introducing a new source or increased source of sewage, industrial waste, or other wastes as defined in section 69-4802 (1), (2), and (3), to waters and tributaries of waters classified as A-open-D-1 or higher by the board shall be required to install and maintain the highest and best degree of treatment works necessary to maintain adequately *this* classification, as defined in section 69-4802 (7) *before* the issuance of a permit by the department.

(g) *Hold* hearings necessary for the proper administration of this chapter.

(h) *Adopt* rules for the administration of this chapter.

(i) *Adopt* pretreatment standards for waste-water discharged into a municipal disposal system, adopt effluent standards as defined in section 69-4802(20), and establish standards of performance for new point source discharges.

(2) The board may:

(a) accept loans and grants from the federal government and other sources to carry out the provisions of this chapter; and

(b) establish minimum requirements for the treatment of wastes."

Section 63. Section 69-4809.1, R.C.M. 1947, is amended to read as follows:

"69-4809.1. **Duties of department.** (1) The department shall:

(a) *Issue*, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes to state waters, consistently with rules made by the board;

(b) *Examine* and approve or disapprove plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;

(c) *Clearly* specify in any permit any limitations imposed as to the volume, strength, and other significant characteristics of the waste to be discharged;

(d) *Collect* and furnish information relating to the prevention and control of water pollution;

(e) *Conduct* or encourage necessary research and demonstrations concerning water pollution;

(f) *Issue* orders to any person to clean up any material which he or his employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and which may pollute them."

Section 64. Section 69-4812, R.C.M. 1947, is amended to read as follows:

"69-4812. **Water pollution control advisory council — officers — meetings — designating of deputy by member.** (1) The council *provided for in section 82A-607* shall select a chairman from among its members. The *director of health and environmental sciences* shall designate a member of the staff of the department to act as secretary to the council. The secretary shall keep records of all actions taken by the council.

(2) It shall hold at least two (2) regular meetings each calendar year. Special meetings shall be held at the call of the chairman or on written request of two (2) or more members.

(3) Each member may, by filing with the secretary, designate a deputy or alternate to perform his duties.

(4) *The council shall only act in an advisory capacity to the department on matters relating to water pollution."*

Section 65. Section 69-4820, R.C.M. 1947, is amended to read as follows:

"69-4820. **Violation of chapter or rule — notice to violator — hearing before board — notice, procedure, order, rehearing.** (1) *When* the department has reason to believe that a violation of this chapter or a rule made under it has occurred, it shall *have* written notice served personally or by mail *on* the alleged violator or his agent. The notice shall state the provision alleged to be violated, the facts alleged to constitute the violation, the nature of corrective action which the department *requires*, and the time within which *the* action is to be taken. For the purposes of this chapter, service by mail *is* complete on the date of mailing.

(2) In a notice given under *subsection* (1) of this section, the department may require the alleged violator to appear before the board for a public hearing and to answer the charges made against him. *The* hearing shall be held no sooner than fifteen (15) days after service of the notice, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.

(3) If the department does not require an alleged violator to appear before the board for a public hearing, he may request the board to conduct *the* hearing. *The* request shall be in writing and shall be filed with the *department* no later than thirty (30) days after service of a notice under subsection (1) of this section. If a request is filed, a hearing shall be held within a reasonable time.

(4) If a hearing is held *under* this section, it shall be public and shall, if the board *considers* it practicable, be held in a county in which the violation is alleged to have occurred.

(5) After a hearing or on failure of an alleged violator to make a timely request for a hearing, the board may issue an appropriate order for the prevention, abatement, or control of pollution. It shall state the date or dates by which a violation shall cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution. The alleged violator may petition the board for a rehearing, on the basis of new evidence, which petition the board may grant for good cause shown.

(6) In addition to or instead of issuing an order, the board may *direct the department* to initiate appropriate action for recovery of a penalty *under* section 69-4823."

Section 66. Section 69-4821, R.C.M. 1947, is amended to read as follows:

"69-4821. **Judicial remedies — review by district court.** (1) *An appeal of an order of the board shall be in the district court of the county in which the alleged source of pollution is located.*

(2) A person interested in the order may intervene, in the manner provided by the Rules of Civil Procedure, if he shows good cause. An intervenor is a party for the purposes of this chapter.

(3) The attorney general shall represent the board if requested, or the *department* may appoint special counsel for the proceedings, subject to the approval of the attorney general.

(4) The initiation of an action for review or the taking of an appeal *does* not stay the effectiveness of any order of the board, unless the court finds that there is probable cause to believe:

(a) That refusal to grant a stay will cause serious harm to the affected party, and

(b) That any violation found by the board:

(i) Will not continue, or

(ii) If it does continue, any harmful effects on state waters will be remedied immediately on the cessation of the violation.

(5) If a court does not stay the effectiveness of an order of the board, it may enforce compliance with that order by issuing a temporary restraining order or an injunction at the request of the board."

Section 67. Section 69-4823, R.C.M. 1947, is amended to read as follows:

"69-4823. Penalties for violation of provisions, rule, permit, effluent standard, or order — purpose and construction of chapter.

(1) A person who violates a rule, permit, effluent standard, or order issued *under* the provisions of this act shall be guilty of an offense and subject to a civil penalty not to exceed ten thousand dollars (\$10,000). Each day of violation constitutes a separate offense.

(2) A person who willfully violates section 69-4806, R.C.M. 1947, or any pretreatment standard established pursuant to this act is guilty of an offense and subject to a fine not to exceed twenty-five thousand dollars (\$25,000) per day of violation or by imprisonment for not more than one (1) year or both. Following an initial conviction under this subsection, subsequent convictions shall subject a person to a fine of not more than fifty thousand dollars (\$50,000) per day of violation, or imprisonment for not more than two (2) years, or both.

(3) Action *under subsection* (1) of this section does not bar enforcement of this chapter or of rules or orders issued *under* it by injunction or other appropriate remedy. The *department* shall institute and maintain any enforcement proceedings in the name of the state.

(4) A purpose of this chapter is to provide additional and cumulative remedies to prevent, abate, and control the pollution of state waters. This chapter *does* not abridge or alter rights of action or remedies in equity or under the common law or statutory law, criminal or civil, nor *does* this chapter or an act done *under* it estop the state or a municipality or person as owners of water rights or otherwise in the exercise of their rights in equity or under the common law or statutory law to suppress nuisances or to abate pollution.

(5) *Fines* collected shall be deposited to the state general fund.

(6) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under this act or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this act shall upon conviction be punished by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment for not more than six (6) months or both.

(7) In a civil action initiated by the department under this act, the department may ask for and the court is authorized to assess a violator for the cost of the investigation or monitoring survey which led to the establishment of the violation, and any expense incurred by the state in removing, correcting or terminating any of the adverse effects upon water quality resulting from the unauthorized discharge of pollutants."

Section 68. Section 69-4825, R.C.M. 1947, is amended to read as follows:

"69-4825. Injunctions. The *department* may bring an action for an injunction against the continuation of an alleged violation which has been the basis of suspension or revocation of a permit by the department or against a person who fails to comply with an emergency order issued by the department *under* section 69-4824 or a final order of the board. The court to which the *department* applies for an injunction may issue a temporary injunction, if it finds that there is reasonable cause to believe that the allegations of the *department* are true, and it may issue a temporary restraining order pending action on the temporary injunction."

Section 69. Section 69-4826, R.C.M. 1947, is amended to read as follows:

"69-4826. Action by other parties. A person, association, corporation, or agency of the state or federal government may apply to the *department* protesting a violation of this chapter. The department shall make an investigation and make a written report to the person, association, corporation, or agency which made the protest."

Section 70. Section 69-4903, R.C.M. 1947, is amended to read as follows:

"69-4903. Functions, powers, and duties of the board of health and environmental sciences. The board of health and environmental sciences shall:

(1) *Have* general supervision over all state waters which are directly or indirectly being used by a person for a public water supply or domestic purposes, or as a source of ice;

(2) *Adopt* rules and standards and issue orders to prevent pollution and protect the quality of water and for the collection and analysis of samples of water used for drinking or domestic purposes, giving legal notice of the adoption by publication or posting, and by filing a copy in the office of the clerk of the municipality or county where the rule or standard is effective."

Section 71. Section 69-4904, R.C.M. 1947, is amended to read as follows:

"69-4904. **Powers and duties of the department of health and environmental sciences.** The department of health and environmental sciences shall:

(1) *Upon* complaint to the department, or to the mayor or health officer of a municipality or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply, and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2) *Have* waters examined to determine their purity and the possibility that they may endanger public health;

(3) *Consult* and advise authorities of cities and towns, and persons having or about to construct systems for water supply, drainage, waste water, and sewage as to the most appropriate source of water supply and the best method of assuring its purity;

(4) *Advise* persons as to the best method of purifying and disposing of their drainage, sewage, or waste water with reference to the existing and future needs of other persons and to prevent pollution;

(5) *Consult* with persons engaged in or intending to engage in manufacturing or other business whose drainage, or sewage may tend to pollute waters as to the best method of preventing pollution;

(6) *Fix* fees for services rendered in analyzing water and inspections to cover costs of the service and deposit receipts in the general fund;

(7) *Establish* and maintain experiment stations and conduct experiments to study the best methods of purifying water, drainage, waste water, sewage, and industrial waste to prevent pollution, including investigation of methods used in other states;

(8) *Enter on* premises at reasonable times to determine sources of pollution or danger to water supplies and whether rules and standards of the board are being obeyed;

(9) *Notify* the attorney general of violations of laws on pollution of state waters."

Section 72. Section 69-4907, R.C.M. 1947, is amended to read as follows:

"69-4907. **Appeal from rule or standard — injunction to require compliance.** A person aggrieved by a rule or standard of the board may appeal to the district court. While the appeal is pending, the rule or standard of the board is in force. The department may request an injunction from the district court to require compliance with rules and standards."

Section 73. Section 69-5210, R.C.M. 1947, is amended to read as follows:

"69-5210. **Denial, suspension or revocation of license — procedure.** (1) A license may not be denied, suspended, or revoked without notice and an opportunity for a hearing before the board.

(2) Notice shall be given the applicant or licensee of a date, not less

than fifteen (15) days after mailing or service, for a hearing before the board;

(3) The decision of the board is final thirty (30) days after it is mailed or served unless the applicant or licensee commences an action in the district court to appeal the decision. An appeal shall be in the district court where the facility is located or will be located."

Section 74. Section 69-5213, R.C.M. 1947, is amended to read as follows:

"69-5213. **Rules and standards for hospitals and hospital related facilities — adoption and publication by the department of health and environmental sciences.** (1) The department shall promulgate, adopt and publish rules and minimum standards for licensure of all hospitals and hospital related facilities.

(2) Rules relating to building, equipment and fire and life safety shall be covered by the state building code.

(3) The department shall extend a reasonable time for compliance with rules after adoption."

Section 75. Section 69-5220, R.C.M. 1947, is amended to read as follows:

"69-5220. **Injunction.** The department, on advice of the attorney general, may maintain an action for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a facility which is endangering health and welfare."

Section 76. Section 69-5301, R.C.M. 1947, is amended to read as follows:

"69-5301. **Definitions.** Unless the context requires otherwise, in this chapter:

(1) "Federal acts" are federal statutes for the construction of medical or related facilities.

(2) "Hospital" includes public health centers and general, pulmonary disease, tuberculosis, mental, chronic disease, and other types of hospitals, and related facilities such as laboratories, out-patient departments, nurses' homes and training facilities, and central service facilities created in connection with hospitals, but does not include a hospital furnishing primarily domiciliary care.

(3) "Medical facility" means a diagnostic or diagnostic and treatment center, rehabilitation facility, facility for long-term care as defined by federal acts, and other medical facilities for which federal aid is or may be authorized.

(4) "Related facility" includes a facility devoted to the diagnosis, treatment, or care of individuals afflicted with mental illness or mental retardation.

(5) "Health center" means a publicly owned facility providing public

health services including publicly owned laboratories, clinics, and administrative offices operated in connection with the facility.

(6) "Nonprofit hospital or nonprofit medical facility" means a hospital or medical facility owned or operated by one (1) or more nonprofit corporations or associations if no part of the net earnings inure to the benefit of any private shareholder or individual."

Section 77. Section 69-5302, R.C.M. 1947, is amended to read as follows:

"69-5302. Department as principal state agency for hospital construction — contracts with federal government. The department of health and environmental sciences is the principal state agency for establishing and administering a state-wide plan for construction, modernization, alteration, equipment, maintenance, or operation of a hospital, medical, or related facility for provision of care, treatment, diagnosis, rehabilitation, training, or related service. The department may enter into contracts and agreements with agencies of the federal government to secure the benefit of federal programs to provide adequate medical and related facilities and services."

Section 78. Section 69-5303, R.C.M. 1947, is amended to read as follows:

"69-5303. Powers and duties of department. The department shall:

- (1) *Inventory* existing hospitals, medical, and related facilities;
- (2) *Survey* the need for construction or alteration of hospitals;
- (3) *Develop* and administer a state plan for the construction and alteration of public and other nonprofit hospitals, medical, and related facilities;
- (4) *If* desirable, enter into agreements for the utilization of facilities and services of other departments, agencies, and institutions, public or private;
- (5) *Accept* and deposit with the state treasurer and spend any grant, gift, or contribution made to meet costs of carrying out this act."

Section 79. Section 69-5305, R.C.M. 1947, is amended to read as follows:

"69-5305. Submission of hospital construction plans to federal agencies — federal funds, use and disposition — inspection of projects — consultants' contracts. The department shall:

- (1) *Prepare* and review a construction program in accordance with federal requirements that will provide adequate hospital, medical, and related facilities to people in the state providing, as far as possible, for distribution throughout the state to make all types of services reasonably acceptable to all persons;
- (2) *Submit* to federal agencies state plans including those for the hospital, medical, and related facilities construction program and modifications of it providing for the establishment and operation of hospital, medical, and related facilities construction activities in accordance with federal requirements;

(3) *Make* application to the appropriate federal agency for funds to assist in carrying out the survey and planning activities. Federal funds shall be deposited in the state treasury and used only for the purposes specified by law. Money which is not spent for those purposes shall be repaid to the federal government;

(4) *After* approval of a plan by the appropriate federal agency, publish a description in newspapers having general circulation throughout the state, and make the plan available upon request to all persons or organizations;

(5) *Inspect* construction or alteration projects approved by the appropriate federal agency and, if satisfactory, certify that work has been performed on the project or purchases made in accordance with approved plans and specifications, and that payment of federal funds is due to the applicant;

(6) *Require* reports, and make inspections and investigations, as necessary or required by the federal agency;

(7) *Contract* with consultants for services which are performed on a part-time or fee-for-service basis not involving administrative duties."

Section 80. Section 69-5307, R.C.M. 1947, is amended to read as follows:

"69-5307. Minimum standards for maintenance and operation of hospitals, medical, and related facilities. The department shall prescribe minimum standards for the maintenance and operation of hospitals, medical, and related facilities receiving federal aid for construction under the state plan."

Section 81. Section 69-5606, R.C.M. 1947, is amended to read as follows:

"69-5606. Denial of application for or revocation of license — request for hearing before the board, notice. If the department denies an application for a license or revokes a license that has been issued, an applicant or licensee is entitled to a hearing before the board of health and environmental sciences to show cause why the action should not be taken. If a hearing is desired, the applicant or licensee shall notify the board in writing before the *tenth* day after notice of the denial or revocation is received."

Section 82. Section 69-5701, R.C.M. 1947, is amended to read as follows:

"69-5701. Violations of public health laws or rules of board or department. Anyone who violates a rule adopted by the board of health and environmental sciences or the department of health and environmental sciences, for which no penalty is specified, is guilty of a misdemeanor."

Section 83. Section 69-5804, R.C.M. 1947, is amended to read as follows:

"69-5804. State radiation control agency. (1) The *department* is the state radiation control agency.

(2) *Under the laws of this state, the department may employ, compensate, and prescribe the powers and duties of the individuals which are necessary to carry out this act.*

(3) *The department may for the protection of the occupational and public health and safety:*

(a) *Develop and conduct programs for evaluation and control of hazards associated with the use of sources of ionizing radiation.*

(b) *Develop programs and adopt rules with due regard for compatibility with federal programs for licensing and regulation of by-product, source, radioactive waste materials, and special nuclear materials, and other radioactive materials. These rules shall cover equipment and facilities, methods for transporting, handling and storage of radioactive materials, permissible levels of exposure, technical qualifications of personnel, required notification of accidents and other incidents involving radioactive materials, survey methods and results, methods of disposal of radioactive materials, posting and labeling of areas, and sources, and methods, and effectiveness of controlling individuals in posted and restricted areas.*

(c) *Adopt rules relating to control of other sources of ionizing radiation. These rules shall cover equipment and facilities, permissible levels of exposure to personnel, posting of areas, surveys, and records.*

(d) *Advise, consult, and cooperate with other agencies of the state, the federal government, other states, interstate agencies, political subdivisions, and with groups concerned with control of sources of ionizing radiation.*

(e) *Accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from other sources, public or private.*

(f) *Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations, relating to control of sources of ionizing radiation.*

(g) *Collect and disseminate information relating to control of sources of ionizing radiation, including:*

(i) *Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;*

(ii) *Maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under this act and any administrative or judicial action pertaining thereto;*

(iii) *Maintenance of a file of all rules relating to regulation of sources of ionizing radiation, pending or adopted and proceedings thereon."*

Section 84. Section 69-5812, R.C.M. 1947, is amended to read as follows:

"69-5812. **Administration procedure and judicial review.** (1) In a proceeding under this act for granting, suspending, revoking, or amending

a license, or for determining compliance with, or granting exceptions from, rules adopted under this chapter, the board of health and environmental sciences shall first afford an opportunity for a hearing on the record upon the request of a person whose interest may be affected by the proceeding, and shall admit the person as a party to the proceeding.

(2) *When the department finds that an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue a rule or order reciting the existence of the emergency and requiring that such action be taken as considered necessary to meet the emergency. Notwithstanding any provision of this act to the contrary, the rule or order is effective immediately. A person to whom the rule or order is directed shall comply with it immediately, but on application to the board, shall be afforded a prompt hearing. On the basis of the hearing the emergency rule or order shall be continued, modified, or revoked by the board within thirty (30) days after the hearing or when the emergency no longer exists."*

Section 85. Section 69-5902, R.C.M. 1947, is amended to read as follows:

"69-5902. **Definitions.** *Unless the context requires otherwise, in this act:*

(1) *"Board" means the board of water and waste water operators provided for in section 82A-612.*

(2) *"Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or waste water treatment plant. Operators of plants or systems serving less than ten (10) families are exempt from this chapter.*

(3) *"Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.*

(4) *"Waste water treatment plant" means facilities designed to remove solids, bacteria, or other harmful constituents of sewage, industrial wastes, or other wastes and which discharges an effluent directly into this state's waters and which serves ten (10) or more families or serves an industry employing ten (10) or more persons.*

(5) *"Water supply system" means the system of pipes, structures, and facilities through which the water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and serves ten (10) or more families or serves an industry employing ten (10) or more persons.*

(6) *"Water treatment plant" means that portion of the water supply system which alters either the physical, chemical, or bacteriological quality of the water rendering it safe and palatable for human use.*

(7) *"Water distribution system" means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply source to the premises of the consumer and which serves ten (10) or more families or supplies an industry employing ten (10) or more persons.*

(8) "Certificate" means a certificate of competency issued by the *department* stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(9) "Montana's waters" means all streams and lakes, including all rivers and lakes bordering on the state, wells, springs, irrigation systems, marshes, watercourses, waterways, drainage systems, and other bodies of water, surface and underground, natural or artificial, publicly or privately owned."

Section 86. Section 69-5903, R.C.M. 1947, is amended to read as follows:

"69-5903. **Board to assist department — meetings and organization — examination of candidates for certification.** (1) The board shall advise and assist the *department* in the administration of the certification program. The board shall serve as an advisory board to the *department* in actions relating to the qualifications of water and waste water treatment plant operators.

(2) *Annually* when new members are appointed to the board a chairman shall be elected at the next board meeting.

(3) The board shall hold at least one (1) examination each year for the purpose of examining candidates for certification at a time and place designated by the board. Those applicants whose competency is acceptable to the board shall be recommended to the *department* for certification. Additional meetings may be called by the chairman, or on written request of four (4) members of the board *when necessary* to carry out this chapter. Four (4) members constitute a quorum. The members of the board shall receive a fee of twenty dollars (\$20) per day while in session, plus the cost of actual and necessary expenses, including travel while discharging their official duties."

Section 87. Section 69-5906, R.C.M. 1947, is amended to read as follows:

"69-5906. **Operator of treatment plant or distribution system to be certified — certification of operators certified by other agency.** Water and waste water treatment plants and water distribution systems, whether publicly or privately owned, must be under the supervision of an operator whose competency is certified to by the *department* in a grade corresponding to the classification of that portion of the water or waste water supply system to be supervised. *However, this chapter does not prevent* a governmental agency, corporation, or individual from continuing to employ in *this capacity* a person in responsible charge of the operation of such works *on July 1, 1967*. Certificates of proper classification may be issued without examination to the person or persons certified by the governing board or owner to have been in responsible charge of the water and waste water plants and water distribution systems on the effective date of the act. A certificate so issued will be valid only in that plant. The board may consider for recommendation for certification the holder of a certificate issued by a governmental agency or equivalent certification board of another state, on presentation to the board of satisfactory

evidence that the applicant is in responsible charge of works located in *this state* requiring a certified operator and that he has successfully passed an examination at least equivalent to that required under section 69-5903(3) and section 69-5905."

Section 88. Section 69-5907, R.C.M. 1947, is amended to read as follows:

"69-5907. **Issuance of operators' certificates — display — annual renewal — revocation — termination of employment — reinstatement of certificate.** The *department* shall issue certificates attesting to the competency of operators. The certificates shall include the classification of the works which the operator is qualified to supervise. The certificate shall be prominently displayed in the office of the operator.

(1) Certificates continue in effect unless revoked by the *department*, but remain the property of the *department* and the certificate shall so state. A certificate shall be renewed annually by payment of the proper fee.

(2) The *department* may revoke the certificate of an operator following a hearing by the *department*, when it is found that the operator has practiced fraud or deception; that reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to properly perform his duties. A person *who has* his certificate revoked by the *department* may appeal to the board for a rehearing within ten (10) days of notification by the *department*, after which time the revocation proceedings are no longer applicable and revocation of the certificate becomes final.

(3) Operators who terminate employment may retain their certificate for two (2) years, providing that all other requirements are met. After two (2) years, a certificate is automatically invalidated. Operators whose certificates are invalidated under this chapter may be issued new certificates of like classification provided appropriate proof of competency is presented to the board. Successful completion of an examination may be required at the discretion of the board."

Section 89. Section 69-5908, R.C.M. 1947, is amended to read as follows:

"69-5908. **Application for operator's certificate — payment of fee — use of proceeds.** A person desiring to engage in the operation of a water treatment plant, water distribution system, or waste water treatment plant shall first file an application with the *department* for a proper certificate. The *department* shall charge a fee, of the same amount as the license cost set forth in section 69-5909, for the filing of each application and shall not act on an application until the fee has been paid. Filing and certification fees shall be deposited with the state treasurer in the "Board of Water and Waste Water Operators Account" in the department earmarked revenue fund and shall be used to pay the expenses of the board and *department* under this chapter. Moneys may be invested in accordance with procedures of investment of state moneys. In granting the certificates, the *department* shall give due regard to the interest of *this state* in protecting the drinking water supplies and the quality of its water."

Section 90. Section 69-5909, R.C.M. 1947, is amended to read as follows:

"69-5909. **Term of operator's certificate — renewal fee — suspension and revocation — reinstatement.** Certificates issued under this chapter shall be renewed annually before July 1. After the payment of the initial fee under section 69-5908, a certificate holder shall pay before July 1 of each certificate year a renewal fee according to the following schedule:

Class I — twenty dollars (\$20)

Class II — fifteen dollars (\$15)

Class III — ten dollars (\$10)

Class IV — five dollars (\$5)

Class V — three dollars (\$3)

A certificate issued after July 1 expires the following June 30. If a certificate holder does not apply for a renewal of his certificate before July 1 and remit to the department the necessary renewal fee, he shall have his certificate suspended by the board. If the certificate remains suspended for a period of more than thirty (30) days it shall be revoked by the board; however, the board, before this revocation, shall notify the certificate holder by certified mail at the address on the issued certificate of its intention to revoke, at least ten (10) days before the time set for action to be taken by the board on the certificate. A certificate once revoked may not be reinstated unless it appears that an injustice has occurred through error or omission or other fact or circumstances indicating to the board that the certificate holder was not guilty of negligence or laches. If a person whose certificate has been revoked through his own fault desires to continue as a water or waste water plant operator, he must make application to the department under section 69-5908. Successful completion of an examination may be required at the discretion of the board. Notice of suspension shall be given to certificate holder when the suspension occurs and to the proper official or owner of the treatment works or distribution system."

Section 91. Section 69-5910, R.C.M. 1947, is amended to read as follows:

"69-5910. **Rules of board.** The board shall adopt rules necessary to carry out this chapter. Before the rules are effective, they shall be approved by the department. The rules shall include, but are not limited to, provisions establishing the basis for classification of treatment plants under section 69-5904, provisions establishing qualifications of applicants, procedures for examination of candidates, and other provisions necessary for the administration of this act."

Section 92. Section 69-5911, R.C.M. 1947, is amended to read as follows:

"69-5911. **Unlawful to operate treatment plant or distribution system without certified operator.** It is unlawful for a person, firm,

or corporation both municipal and private, operating a waste water treatment plant, water treatment plant or water distribution system to operate it unless the competency of the operator is certified to by the department under this act. Furthermore, it is unlawful for a person to perform the duties of an operator without being certified under this act."

Section 93. Section 69-6010, R.C.M. 1947, is amended to read as follows:

"69-6010. **Powers and duties of board.** The board of a refuse disposal district established and organized under this act have the following powers and duties with the approval of the county commissioners of the counties involved:

(1) To develop and administer a program for the collection or disposal of refuse in the district.

(2) To employ personnel.

(3) To purchase, rent, or execute leasing agreements for such equipment and material necessary for carrying on an effective refuse collection or disposal program.

(4) To cooperate with any corporation, association, individual, or group of individuals, including any agency of the federal, state, or local government, in order to carry out effective programs.

(5) To receive gifts, grants, or donations for the purpose of advancing the program; to acquire by gift, deed, purchase, or condemnation land necessary for refuse disposal purposes.

(6) To enforce department of health and environmental sciences or local board of health rules pertaining to the storage, collection, and disposal of refuse.

(7) To apply for and receive from the federal government or the state government on behalf of the refuse disposal district moneys appropriated by federal or state legislative bodies for aiding these programs.

(8) To borrow from any loaning agency funds available for assistance in planning or financing a refuse disposal district and repay these with the moneys received from the fees levied under this act.

(9) The board may implement its proposed program a section at a time. If a program is implemented a section at a time, the fees may be levied only against that part of the district that is receiving the service. As the program is expanded throughout the district, that part of the district will start to pay the fee for service."

Section 94. Section 69-6203, R.C.M. 1947, is amended to read as follows:

"69-6203. **Duties of department — department authorized to accept gifts — enter into contracts — acquire and dispose of property.** (1) The department of health and environmental sciences, hereafter referred to as department in this chapter, shall:

(a) Plan, promote, and assist in the support of alcohol and drug dependence prevention, treatment, and control programs;

(b) *Conduct*, sponsor, and support research, investigations, and studies, including evaluation, of all phases of alcohol and drug dependence;

(c) *Assist* the development of educational and training programs relative to alcohol and drug dependence, and carry on programs to assist the public, and technical and professional groups, in becoming fully informed about alcohol and drug dependence;

(d) *Promote*, develop, and assist, financially and otherwise, alcohol and drug dependence programs administered by other state agencies, local government agencies, and private nonprofit organizations and agencies;

(e) *Encourage* and promote effective use of facilities, resources, and funds in the planning and conduct of programs and activities for prevention, treatment, and control of alcohol and drug dependence and, in this respect, *cooperate* with and utilize to the maximum possible extent the resources and services of federal, state, and local agencies.

(2) To carry out this act, the department may:

(a) *Accept* gifts, grants, and donations of money and property from public and private sources;

(b) *Enter* into contracts;

(c) *Acquire* and dispose of property."

Section 95. Section 82A-601, R.C.M. 1947, is amended to read as follows:

"82A-601. **Department of health and environmental sciences — head.** There is a department of health and environmental sciences. The department head is the director of health and environmental sciences appointed by the governor in accordance with section 82A-106, and in addition shall have the qualifications required in section 82A-608."

Section 96. There is a new section to be numbered 82A-601.1, R.C.M. 1947, which reads as follows:

82A-601.1. **Functions of department.** The department and its units have responsibility for the administration of laws relating to public health, including, but not limited to, laws on:

- (1) Food services (Title 27, chapter 6);
- (2) Foods, drugs, and cosmetics (Title 27, chapter 7);
- (3) Flour and bread (Title 27, chapter 8);
- (4) Lodging establishments (Title 34, chapter 3);
- (5) Sanitarians (Title 69, chapter 34);
- (6) Ambulance services (Title 69, chapter 36);
- (7) Air pollution (Title 69, chapter 39);
- (8) Refuse disposal areas (Title 69, chapter 40);
- (9) Industrial hygiene (Title 69, chapter 42);
- (10) Tuberculosis control (Title 69, chapter 43);
- (11) Vital statistics (Title 69, chapter 44);
- (12) Local boards of health (Title 69, chapter 45);
- (13) Venereal disease control (Title 69, chapter 46);
- (14) Shoddy control (Title 69, chapter 47);
- (15) Water pollution (Title 69, chapter 48);
- (16) Public water supplies (Title 69, chapter 49);
- (17) Subdivisions (Title 69, chapter 50);
- (18) Cadavers (Title 69, chapter 51);
- (19) Hospitals and related facilities (Title 69, chapter 52);
- (20) Hospital survey and construction (Title 69, chapter 53);

(21) Cesspools, septic tanks, and privies, etc. (Title 69, chapter 54);

(22) Public swimming pools and bathing places (Title 69, chapter 55);

(23) Tourist campgrounds (Title 69, chapter 56);

(24) Control of ionizing radiation (Title 69, chapter 58);

(25) Water treatment plants and distribution systems (Title 69, chapter 59);

(26) Refuse disposal districts (Title 69, chapter 60);

(27) Alcohol and drug dependence (Title 69, chapter 62).

Section 97. Section 82A-604, R.C.M. 1947, is amended to read as follows:

"82A-604. **Division of environmental sciences — creation.** There is a division of environmental sciences within the department. The department shall assign all functions performed by the department relating to air pollution control, water pollution control, radiation control, pesticides control, environmental sanitation, solid waste disposal, industrial hygiene, and related areas to the division."

Section 98. Section 82A-606, R.C.M. 1947, is amended to read as follows:

"82A-606. **Air pollution control advisory council — appointment — qualifications — term.** (1) *There is an air pollution control advisory council.*

(2) *The council consists of ten(10) members appointed by the governor, with the consent of the senate, as follows: a representative of labor; a representative of agriculture; a representative of the manufacturing industry; a representative of the fuel industry; a practicing physician licensed in this state; a practicing veterinarian licensed in this state; a practicing registered professional chemical or environmental engineer; a meteorologist; a conservationist; and an urban planning consultant.*

(3) *The appointed members shall serve at the pleasure of the governor.*

(4) Subsections (5) through (8) of section 82A-110 apply to the council and members."

Section 99. Section 82A-607, R.C.M. 1947, is amended to read as follows:

"82A-607. **Water pollution control advisory council — appointment — qualifications — term.** (1) *There is a water pollution control advisory council.*

(2) *The council consists of eleven (11) members. The members are:*

(a) *The director of fish and game;*

(b) *The administrator of the water resources division of the department of natural resources and conservation;*

(c) *The director of agriculture;*

(d) *Eight (8) members appointed by the governor as follows: a representative of industry concerned with the disposal of inorganic waste; a representative of industry concerned with the disposal of organic waste; a livestock feeder; a representative of municipal government; a representative of an organization concerned with fishing for sport; a representative*

from labor; a supervisor of a soil and water conservation district; a representative of an organization concerned with water recreation.

(3) The appointed council members serve at the pleasure of the governor.

(4) Subsections (5) through (8) of section 82A-110 apply to the council and members."

Section 100. Section 82A-608, R.C.M. 1947, is amended to read as follows:

"82A-608. **Director of health and environmental sciences — qualifications.** (1) The director of health and environmental sciences shall:

- (1) Have a degree of doctor of medicine.
- (2) Have successfully completed at least one (1) year of graduate study in an approved school of public health.
- (3) Have had at least two (2) years' experience as a full-time public health officer.
- (4) Be eligible for a license by the board of medical doctors.
- (5) Receive a license from the board of medical doctors not later than six (6) months after his appointment."

Section 101. There is a new section to be numbered 82A-612, R.C.M. 1947, which reads as follows:

82A-612. **Board of water and waste water operators — appointment — qualifications — term.** (1) There is a board of water and waste water operators.

(2) The board consists of seven (7) members. Except as provided in subsection (2)(e) of this section, the members shall be appointed by the governor. The members are:

- (a) Two (2) members who are employed water supply system or water treatment plant operators holding valid certificates. One (1) of these members shall hold a certificate by examination of the highest class issued by the department of health and environmental sciences. There is no restriction on the classification of the certificate held by the other operator;
- (b) Two (2) members who are employed waste water treatment plant operators holding valid certificates. One (1) of these members shall hold a certificate by examination of the highest class issued by the department of health and environmental sciences. There is no restriction on the classification of the certificate held by the other operator;
- (c) One (1) member serving on the faculty of a university or college whose major field is related to water supply systems, waste water treatment, chemical or civil engineering, chemistry, or bacteriology;
- (d) One (1) member who is a representative of a municipality required to employ a certified operator and who holds a position of either city

manager, city engineer, director of public works, works manager, or their equivalent;

(e) The administrator of the division of environmental sciences of the department of health and environmental sciences or a qualified member of his staff appointed by the administrator.

(3) Members, except the ex officio voting member from the department of health and environmental sciences, shall serve for a term of six (6) years.

(4) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108.

Section 102. Section 83-108, R.C.M. 1947, is amended to read as follows:

"83-108. **Jurisdiction over lands purchased by United States.** Pursuant to article 1, section 8, paragraph 17 of the constitution of the United States, consent to purchase is hereby given, and exclusive jurisdiction ceded, to the United States over and with respect to any lands within the limits of this state, which shall be acquired by the complete purchase by the United States, for any of the purposes described in said paragraph of the constitution of the United States, said jurisdiction to continue as long as said lands are held and occupied by the United States for said purposes; reserving, however, to this state the right to serve and execute civil or criminal process lawfully issued by the courts of the state, within the limits of the territory over which jurisdiction is ceded in any suits or transactions for or on account of any rights obtained, obligations incurred, or crimes committed in this state, within or without such territory; and reserving further to the said state the right to tax persons and corporations, their franchises and property within said territory; and reserving further to the state and its inhabitants and citizens the right to fish and hunt, and the right of access, ingress and egress to and through said ceded territory to all persons owning or controlling livestock for the purpose of watering the same, and saving further to the state of Montana jurisdiction in the enforcement of state laws relating to the duties of the department of livestock and the department of health and environmental sciences, and the enforcement of any regulations promulgated by said departments in accordance with the laws of the state of Montana; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, shall file an accurate map or plat and description by metes and bounds of said lands in the office of the county clerk and recorder of the county in which said lands are situated, and if such lands shall be within the corporate limits of any city, such map or plat shall also be filed in the office of the city clerk of said city, and the filing of such map as herein provided, shall constitute acceptance of the jurisdiction by the United States as herein ceded. The offer by the state of Montana to cede to the federal government legislative jurisdiction over areas within the state of Montana as contained in the act of the second legislative assembly of the state of Montana, 1891, entitled: "An act giving the consent of the state of Montana to the purchase, by the United States, of land in any city or town of the state, for the purpose of United States courthouse, post office and for other purposes" approved March 5, 1891,

as amended by the act of the third legislative assembly of 1893, an act entitled: "An act giving the consent of the state of Montana to the purchase by the United States of land in any city or town of the state for the purpose of United States courthouse, post offices and for other like purposes," approved March 9, 1893, is hereby withdrawn except as to areas heretofore completely purchased or acquired by the federal government and over which areas the federal government has heretofore assumed either exclusive legislative jurisdiction or concurrent legislative jurisdiction under the terms of one or the other of said acts."

Section 103. Section 83-109, R.C.M. 1947, is amended to read as follows:

"83-109. **Concurrent jurisdiction over Fort Peck dam ceded to United States — reservation of rights to state.** That consent to purchase or condemn all necessary lands is hereby given and concurrent jurisdiction shall be, and the same is hereby, ceded to the United States over the Fort Peck dam, the body of water or artificial lake created by such dam, the land under such body of water, and any lands now owned or which may be hereafter acquired by the United States and which shall touch such body of water, all such being situated in the counties of Valley, Phillips, McCone, Garfield, Petroleum and Fergus, state of Montana, saving, however, to the said state the right to serve civil or criminal process within the limits of the territory over which jurisdiction is so ceded in any suits or prosecutions for or on account of rights obtained, obligations incurred, or crimes committed in said state, within or without said territory, and saving further to the said state the right to tax persons and corporations, their franchises and property within said territory, and reserving further to the said state and its inhabitants, citizens, and non-residents the right to fish or hunt by boat or otherwise, and the right of access, ingress and egress to and through said ceded territory to all persons owning or controlling livestock for the purpose of watering the same, and saving further to the state jurisdiction in the enforcement of the state laws relating to the duties of the *department of livestock*, and the *department of health and environmental sciences*, and the enforcement of regulations promulgated by said *departments* in accordance with the laws of said state; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, notifies the governor of the state of Montana that they assume police or military jurisdiction over said territory."

Section 104. There is a new section to be numbered 82A-613, R.C.M. 1947, which reads as follows:

82A-613. **Name changes.** Wherever the words "state board of health," "board," "board of health," or "Montana state board of health" appear in sections 48-135, 48-140, 69-4303, 69-4402, 69-4702, 69-5503, 69-5602, 69-5803, and 95-802, the words "department of health and environmental sciences" are substituted therefor.

Section 105. There is a new section to be numbered 82A-614, R.C.M. 1947, which reads as follows:

82A-614. **Name changes.** Wherever the words "state department of

health," or "bureau of vital statistics, state board of health" appear in sections 69-5102, 69-5203, 69-5401, and 93-101-4, the words "department of health and environmental sciences" are substituted therefor.

Section 106. There is a new section to be numbered 82A-615, R.C.M. 1947, which reads as follows:

82A-615. **Name changes.** Wherever the words "state board of health" appear in sections 11-2412, 15-2304, and 16-1037, the words "department of health and environmental sciences" are substituted therefor.

Section 107. There is a new section to be numbered 82A-616, R.C.M. 1947, which reads as follows:

82A-616. **Name changes.** Wherever the words "state board," "board," or "state board of health" or "board of health" appear in sections 27-613, 27-615, 27-620, 27-621, 27-625, 27-709, 27-711, 27-713, 27-715, 27-716, 27-717, 27-719, 27-720, 27-802, 27-805, 34-307, 69-3403, 69-3404, 69-3609, 69-4306, 69-4403, 69-4407, 69-4410, 69-4411, 69-4412, 69-4413, 69-4414, 69-4416, 69-4425, 69-4431, 69-4616, 69-4617, 69-4703, 69-4704, 69-4705, 69-4706, 69-5205, 69-5207, 69-5208, 69-5212, 69-5217, 69-5219, 69-5304, 69-5306, 69-5308, 69-5310, 69-5311, 69-5401, 69-5402, 69-5406, 69-5407, 69-5505, 69-5510, 69-5511, 69-5603, 69-5806, 69-5807, 69-5808, 69-5809, 69-5810, 69-5813, 69-5814, and 69-5816, the word "department" is substituted therefor.

Section 108. There is a new section to be numbered 82A-617, R.C.M. 1947, which reads as follows:

82A-617. **Name changes.** Wherever the words "state board" appear in sections 69-4118, 69-4509, 69-4511, and 69-4519, the word "department" is substituted therefor.

Section 109. There is a new section to be numbered 82A-618, R.C.M. 1947, which reads as follows:

82A-618. **Name changes.** Wherever the words "department of health," or "state department of health" appear in sections 69-4004, 69-4005, 69-4007, 69-4009, 69-4110.1, 69-4403, 69-4610, 69-4705, 69-5402, 69-5403, 69-5504, 69-5506, 69-5507, 69-5508, and 69-5603, the word "department" is substituted therefor.

Section 110. There is a new section to be numbered 82A-619, R.C.M. 1947, which reads as follows:

82A-619. **Name changes.** Wherever the words "state registrar" appear in sections 69-4406, 69-4410, 69-4411, 69-4417, 69-4418, 69-4423, 69-4431, 69-4432, 69-4433, 69-4434, and 69-4435, the word "department" is substituted therefor.

Section 111. There is a new section to be numbered 82A-620, R.C.M. 1947, which reads as follows:

82A-620. **Name changes.** Wherever the words "executive officer," or "director" appear in sections 27-615, 69-4509, 69-5311, 69-5904, and 69-5905, the word "department" is substituted therefor.

Section 112. The publishers of the Revised Codes of Montana, 1947, are directed, under the supervision of the supreme court of Montana, to make the substitutions enumerated in sections 104, 105, 106, 107, 108, 109, 110 and 111 of this act, when reprinting sections or portions of sections of the Revised Codes in either supplements to or replacement volumes for the Revised Codes.

Section 113. Sections 27-618, 69-3408, 69-3409, 69-4101, 69-4103, 69-4105, 69-4107 through 69-4109, 69-4113, 69-4210, 69-4810, 69-4811, 69-4813, 69-5211, 69-5214, 69-5215, 69-5216, 69-5805, 69-6202, 82A-602, 82A-603, and 82A-609 are repealed.

Section 114. This act is effective on passage and approval.

Approved March 28, 1974

CHAPTER NO. 350

AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF THE LAWS RELATING TO THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 54-301, R.C.M. 1947, is amended to read as follows:

"54-301. **Definitions.** As used in this act:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

- (a) a practitioner (or by his authorized agent), or
- (b) the patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(3) "Board" means the board of pharmacists, provided for in section 82A-1602.21.

(4) "Bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

(5) "Dangerous drug" means a drug, substance or immediate precursor in schedules I through V hereinafter set forth.

(6) "Counterfeit substance" means a dangerous drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number of device,

or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(8) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(9) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(10) "Dispenser" means a practitioner who dispenses.

(11) "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

(12) "Distributor" means a person who distributes.

(13) "Drug" means:

(a) substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) substances (other than food) intended to affect the structure or any function of the body of man or animals; and

(d) substances intended for use as a component of any article specified in clause (a), (b), or (c) of this subsection. It does not include devices or their components, parts or accessories.

(14) "Immediate precursor" means a substance which the board of pharmacists has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

(15) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a dangerous drug, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the drug or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a dangerous drug by an individual for his own use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(a) by a practitioner as an incident to his administering or dispensing of a dangerous drug in the course of his professional practice, or